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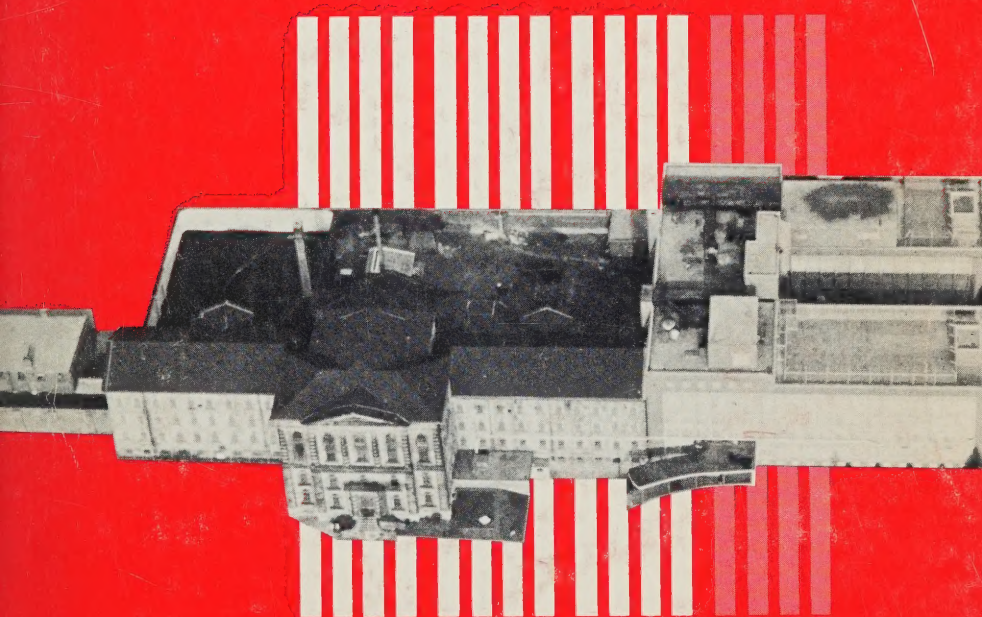


REPORT OF THE

Royal

Commission on
the Toronto Jail
and Custodial
Services

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Government
Publication

REPORT OF THE
Royal Commission
on the Toronto Jail
and Custodial Services

VOLUME 3

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REPORT OF THE
Royal Commission
on the Toronto Jail
and Custodial Services

VOLUME 3

Commissioner:
His Honour Judge B. Barry Shapiro



Queen's Printer for Ontario



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REPORT OF THE
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VOLUME 3

The Geography of the Toronto Jail

The Toronto Jail is situated on the north side of Gerrard Street East, just west of Broadview Avenue. This is slightly outside the downtown core. The surrounding district includes a mixture of old factories, small "working class" homes, government-subsidized, low-rent accommodation, rooming houses, and the course of one of Toronto's historic rivers, the Don (see Figure 1). It is from its close proximity to this river that the jail is more comfortably, and more often, referred to by the public, inmates, and correctional officers as "the Don" or "the Don Jail", rather than as "the Toronto Jail", its official name. The evidence of many witnesses will reflect the more commonly used nomenclature.

For a proper understanding of the individual cases in which excessive use of force was alleged, it is necessary to have a general knowledge of the interior of the jail, which consists of two adjoining buildings linked by a basement tunnel. References in the following description, particularly where photographs are used, are to the jail as it existed in October 1974, when the Commission began its hearings. Where there has been a change, and it is relevant, this will be indicated.

Old Building

The west building was completed in 1865. Ironically, it suffered a fire in 1858 prior to its completion. From the condemnation it received from grand juries in later years, as well as from criticism it has received from other





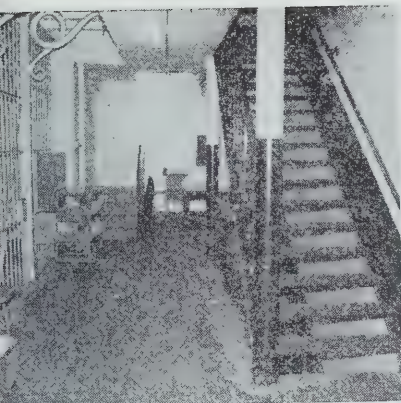
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1. The Toronto Jail and surroundings, viewed from a helicopter in 1977. Looking north, the Don River is at the left and Broadview Avenue at the right. 2. Looking west across the rotunda on the first floor of the old building.



3

3. Looking east across the rotunda at the landings of the pairs of corridors on the first, second, and third floors. 4. Looking south outside Corridor 3 and (Figure 5) looking north outside Corridor 4 on the second floor of the old building. 6. The vehicle sallyport giving access to the basement admitting area in the old building.



4



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8

7. Looking west in the basement of the old building at the doors of the old segregation cells. 8. Inner door of one of the old segregation cells, now used for storage.

quarters from time to time, we may consider it unfortunate that Phoenix ever rose from the ashes on Gerrard Street.

Viewing the building as prison architecture, we note the impressive façade in the style of England's famous Newgate Prison, and the traditional high central rotunda with its dome, surrounded by walkways, iron stairs, and corridors.

Figure 2 is a view to the west from the landing outside Corridors 7 and 8 (the court cells). Across the rotunda, in the background, are the stairs used by correctional staff and inmates for access between floors.

Figure 3 shows the rotunda area, looking east from the landing outside Corridors 1 and 2 (the youth cells). Another set of stairs, on the east side of the rotunda, is seen in the background.

Figures 4 and 5, taken from the second-floor landing outside Corridors 3 and 4 (also used as youth cells), show the iron stairways leading to the first and third floors.

The older building, frequently referred to as "the old jail" or "the old building", comprises a basement area and four upper floors. Male inmates are "delivered" to both the new and the old sections of the jail through a vehicle sallyport giving entry to the basement of the old building. Figure 6 shows this sallyport, together with the outer guard station.

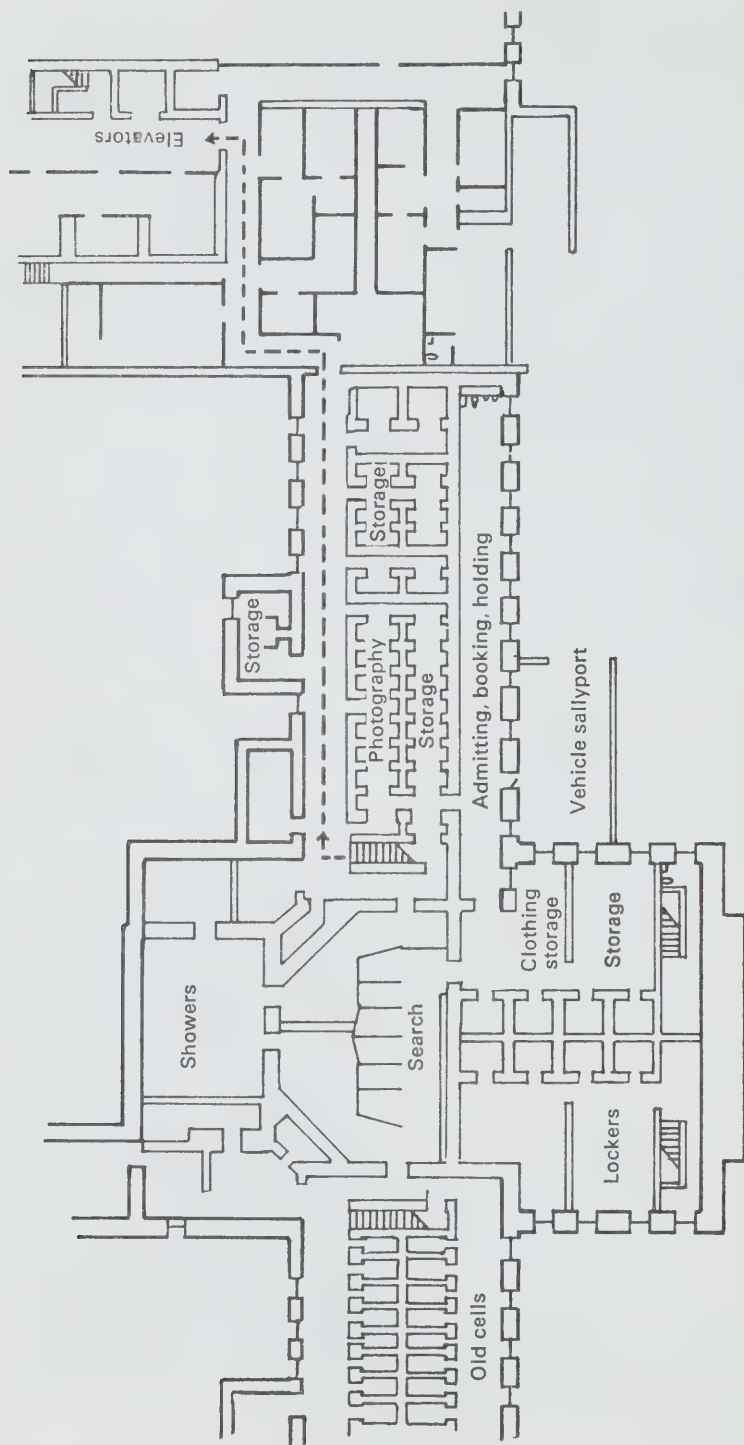
BASEMENT

Police vans and other vehicles usually back into the sallyport area. The entrance door is then closed and an inner door is opened, giving access to a holding area, and thence to an admitting and booking section, and a search area, with divided cubicles, showers, and facilities for issuing jail clothing and for storing personal clothing. From there the inmate being admitted is taken to special rooms for fingerprinting and photographing. The basement also contains 14 old segregation cells.

The old segregation cells, according to evidence, were condemned when the more modern segregation cells were put into use in the new building. Some of the old cells were then allocated for storage purposes. Incidents were reported in which the old segregation cells, euphemistically referred to by Gary Dassy and others as "Garrett's Hotel" (named after C.O. 6 Stewart Garrett), played a part. Figure 7 shows the outer doors of the old segregation cells. Figure 8 shows the inner door of an old segregation cell that is being used for storage.

The balance of the basement area consists of woodworking, paint, and pipe-fitting shops (used almost wholly for maintenance purposes rather than as trades training areas for inmates), and a separate but connected small building to the west that was (but is no longer) used as a temporary absence program (T.A.P.) dormitory. During a tour of the jail in December 1975, it was indicated to us that a new feature had been added to the basement area, namely, a records processing room from which emanated conduit-pipe dispatch tubes.

The sections of the basement area that figured most often in the evidence were "admitting and booking" with its holding area; the partitioned, cubicled search area; and the basement tunnel, or corridor, joining the old and new buildings.



Parts of the basement of the old and new buildings, showing the admitting area, the stairs giving access from the first floor of the old building, and the passage leading from the stairs to the elevators in the new building.

Aside from an occasional incident in which one of the old segregation cells was "temporarily" used, inmates in the old building who were to be confined to isolation, segregation, dissociation, solitary confinement, or "the hole" (all synonymous terms) were taken from whatever floor they were housed on, down the iron stairways to the stone stairs leading from the Corridors 7 and 8 landing on the main floor to the basement tunnel. Then they proceeded through the tunnel – peacefully or forcibly escorted; on their own or under restraint; submissively or fighting their way; giving or taking blows *en route*; indeed, in all manner of ways, as will be seen from the recounting of many events and incidents. Once in the new building, they were escorted to segregation cells on one of the four floors, usually by an elevator but at times by the stairway.

Occasionally there was an allegation that the fingerprinting room or the photography room, running off the basement corridor, was used as a halfway house for "discipline".

Conflicting stories came to light during our hearings about travels down the stone staircase and along the basement corridor. Imagine how many more stories could be told by those well-worn steps. The Commission's inquiry encompassed over 100 allegations spanning a period of four or five years, so the stairway must have been witness to thousands of tense escort parties in its 100-odd years. What were the hopes or dreams of the troubled men and their escorts as they trudged or shuffled up and down those stairs? Were they wholly occupied with themselves or did they in thought picture their families and loved ones? Did the turnkeys, guards, or correctional officers (as they have been successively called over the years) count the hours until they would be released from the day's work, while the inmates counted the days or months or years until freedom would catch up to them? Did either hear the distant sound of heel on cement or the reverberating echo of steel door against metal gate?

Figure 9 is a view of the basement corridor looking east from the foot of the stone stairway towards the new building. Views up and down the somewhat hollowed-out stairs will be found on page 105.

FIRST FLOOR

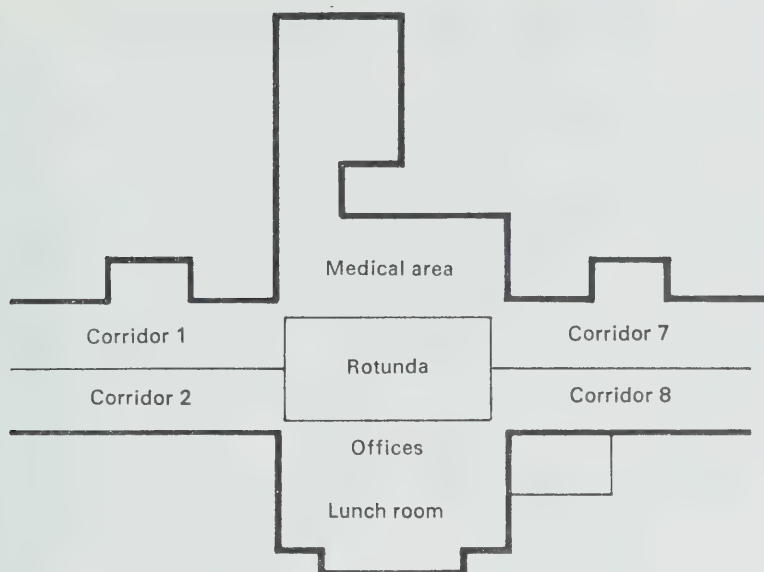
The first floor of the old building contains the former main entrance. No longer is the front door of the old building used as the main public entrance of the jail. This has been transferred to the new building. The main entrance to the old building is still used, however, by staff and by intermittent inmates (those serving sentences on weekends or on other specified days, rather than at one stretch).

Connecting the entrance of the old building to the rotunda area is a hallway off which are the Chief's office and the correctional officers' lunch room, the tea room, and other rooms.

The Chief's office functions much in the manner of a military orderly room. Here, the senior shift officer details the duties, posts, and stations of the individual line officers, the C.O. 1s and C.O. 2s who perform the actual custodial and guarding duties. (The line officers are at times referred to in the evidence as "grey shirts" because of the colour of their shirts. White shirts are worn by C.O. 3s and up.)



9. *Looking east along the basement tunnel leading from the old building to the new building.*



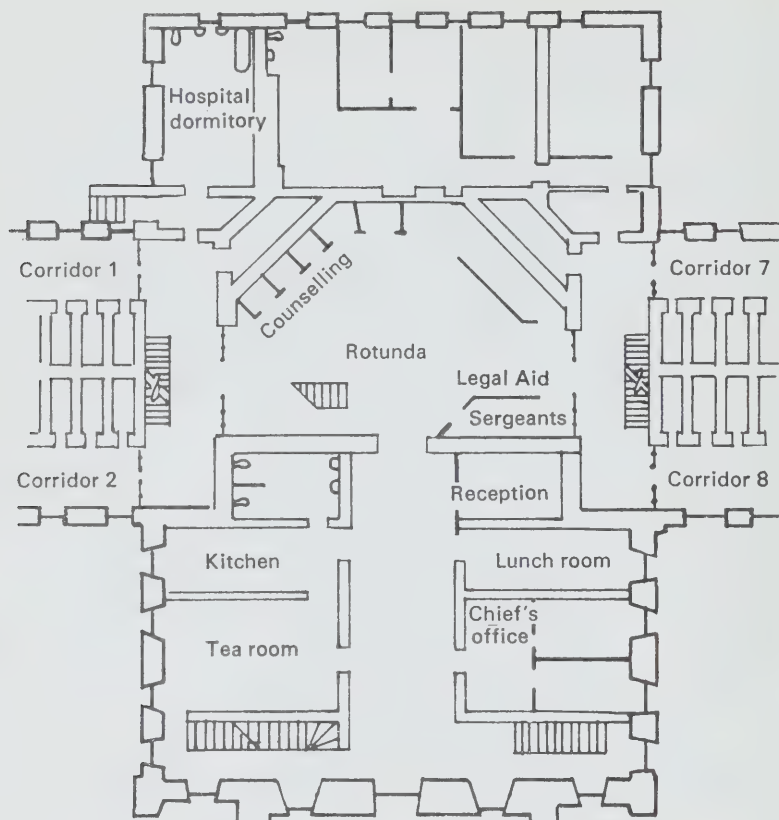
An overall view of the first floor of the old building.

The senior shift officer maintains his headquarters in the Chief's office during his shift. The lunch room is a small room where the correctional staff may eat at a few small tables the lunches they bring from home or "tray meals" they bring from the kitchen, situated in the basement of the new building. Bulletin boards that display, among other notices, all Standing Orders of the jail are on its two long walls.

The tea room is a slightly larger room, and it is used as an off-duty lounge. A billiard table and a few small lunch tables occupy most of its space. It is from the tea room and the lunch room that reserves are sometimes called when an emergency arises.

The rotunda area of the first floor has been peripherally encroached upon by the addition of doorless wooden cubicles that are used by the jail's staff of social workers, and by lawyers interviewing inmates. There is little dignity or privacy in these appointments. The cubicles are what the available space allows in an old and overcrowded building. Two other encroachments on the rotunda that are referred to in the evidence are the medical records room and the combined sergeants' office and Legal Aid room.

There are four "corridors" (rows of cellular accommodations for inmates) off the rotunda on the first floor. These are Corridors 1 and 2 on the west side and Corridors 7 and 8 on the east side. Entry to a typical corridor is through a gate, or "grille". Figure 10 shows the grille leading into Corridor 8. The locking device is shown to the right, half way down the post bearing



Detail of the rotunda area of the first floor of the old building.

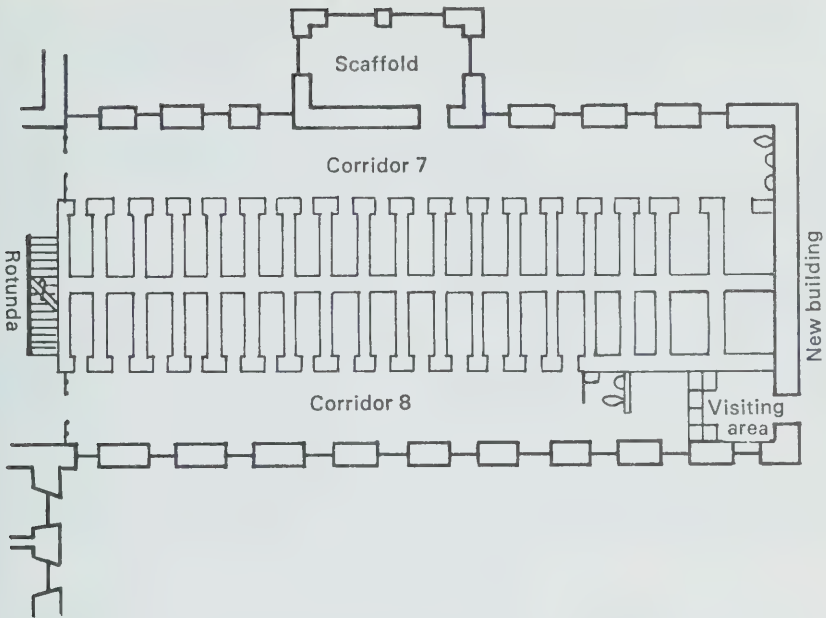
a numeral 8. The cell entrances are at the left in the photograph.

Figure 11 is a view of the corridor. The benches and table are in what is known as a "day room". The cell entrances are at the left.

A photograph taken through an open grille looking into the day room and showing cell entrances, this time on the right, is seen in Figure 12. In the background is a wash-basin, and behind a half-height "privacy partition" is a toilet.

The cells in the old building contain no toilet save a "night bucket", nor are there any individual washing facilities. Each of the four corridors contains 16 single cells and two somewhat larger cells that may accommodate more than one person. Figure 13 shows one of the single cells in these corridors.

Corridors 1 and 2 are used, as far as possible, to house young offenders.



Detail of Corridors 7 and 8 on the first floor of the old building.

This term refers to inmates aged 16 to 20 or 21. (Unfortunately, these form a large proportion of the jail's population.)

It was in Corridor 2, the more southerly of the two corridors on the west side, that the Frost incident arose. Frost's journey on the main floor, before he was taken to segregation, was from Corridor 2 to the guard station (the correctional officer's post outside each corridor in the old building), across the 1 and 2 landing (the outer area, adjacent to the stairwells and abutting the two adjoining corridors) and the rotunda and the 7 and 8 landing, to the reception room. The reception room is a large holding cell or "bull pen" to the west of 7 and 8 landing and opposite Corridor 8.

Corridors 7 and 8 are known as the court cells. Corridor 8 has been shortened in order to make room for visiting facilities at its eastern end. The inmate is escorted by a correctional officer to a space where he can speak by telephone with, and see through a glass partition, a visitor who has gained access from the first floor of the new building.

The subject of visitors is dealt with elsewhere. Suffice it to say here that all inmates are treated as equal security risks at the Toronto Jail, and for this reason there is no direct contact between inmates and their visitors. There is other accommodation in the jail where an inmate is afforded the opportunity of direct contact with his legal counsel or representative.



10



11



12



10. Looking east into Corridor 8 on the first floor of the old building. 11. Looking east inside Corridor 8 towards the male visiting area. 12. Corridor 7 on the first floor of the old building, viewed through the open grille. 13. A view of a cell in the old building.

Also on the main floor is the surgery, which consists of a medical examination room, a nurses' station, a pharmacy, and a waiting room for inmate patients. Outside the surgery is a vestibule with bench, also used as a waiting area by inmates. This vestibule faces south to the 7 and 8 landing.

Near by, but not directly connected, are the medical records office (already referred to as one of the encroachments on the rotunda area) and a hospital dormitory. A photograph of the hospital dormitory as it appeared on one of our early visits to the jail is shown in Figure 14. (Subsequently the hospital dormitory was moved to better accommodation in the new building.)

The entrance to the hospital dormitory, looking north from outside Corridor 2, is shown in Figure 15. (This shows the vantage point of the hospital dormitory inmates in the Frost episode.)

Also on the first floor, outside the hospital dormitory, is a vestibule that gives access not only to the dormitory but also, at right angles, to a set of stairs leading out to the old building's male exercise yard, shown in Figure 16. The buildings in the background are not part of the Toronto Jail. The same stairway also led down to the old segregation cells in the basement.

Mention was made of Corridors 7 and 8, often referred to as the court cells, used to lodge inmates overnight before they were taken to the various metropolitan court houses the following morning. Similarly, on return from court, inmates were placed in these corridors before being dispersed throughout the jail. These corridors were at times crowded so far beyond their normal cellular capacity that they became areas of great tension, especially when mattresses had to be spread on the day room floor for sleeping purposes.

The amalgam in the court cells included the old, the young, the first offender, the inveterate recidivist — persons charged with non-payment of parking fines as well as persons awaiting sentences for crimes such as murder, rape, and arson. The tension was heightened by anxiety over verdicts and sentences and exacerbated by the overcrowding and the wholly inadequate washing and toilet facilities. The court cells are dealt with elsewhere in this report. Suffice it here to indicate their location and note that they were a sensitive area of high tension.

SECOND FLOOR

The second floor contains four corridors. Corridors 3 and 4 are on the west side of the rotunda and are above, and identical to, Corridors 1 and 2 on the first floor. They, too, are usually used for young offenders. Because security is better in the new building, the ironic situation existed whereby the older inmates facing the more serious charges were housed in the better accommodation.

Corridors 9 and 10 are on the east side, above and identical in size to Corridors 7 and 8.

Also on the second floor is a chapel that served as a recreational room and a theatre for visiting entertainers. Outside its entrance is the balcony, or mezzanine, area of the rotunda.

The south wing of the second floor accommodates the chaplain, the library, the social workers, and various offices.

THIRD AND FOURTH FLOORS

The third floor's cellular accommodation differs from that of the lower floors. In the east and west wings are a total of four corridors each with 10 cells, most of which accommodate four inmates. These cells are without sinks or toilets. Such facilities are at the far end of each corridor, consisting of one toilet and one basin per corridor. So, again, the "night pail" in these corridors is a communal facility. The reader can imagine what this means if one of the inmates has an upset stomach and cannot wait until morning. And this in the last quarter of the 20th century, and, at the time of writing, over seven years after man's scientific genius first permitted him to land on the moon!

Corridors 11 and 12 are on the east side of the rotunda, 11 being the northern one. Corridors 5 and 6 are on the west side. Although there is also a balcony on this floor, the entry gates are usually locked, so that if a correctional officer wishes, or is required, to go from an east corridor to a west one, or vice versa, the usual route is down two flights of stairs, across the first-floor rotunda, and then up another double flight of stairs.

North of the rotunda is a dormitory, referred to in the Martin incident as "11 dorm". Its double-decker cots were used at that time to accommodate "intermittent inmates".

To the south of the rotunda, below the level of the third-floor corridors but above that of the offices on the second floor, are two sets of cells, each set with its own day room. The barred grilles have been removed from the cells. The two sets of cells and day rooms comprise what is called "2 annex".

Directly above 2 annex, and reached through two stairways from it, is an identical area called 3 annex. Whereas 2 annex may be reached by stairs from the third floor landing outside Corridor 12, as well as by stairs going up from the offices on the second floor, 3 annex is cut off from the fourth floor, which is used for the storage of clothing and records. Part of the fourth floor is unused.

That, then, is the old building of the Toronto Jail, at least in so far as is relevant to the evidence.

New Building

The new part of the Toronto Jail was completed in 1958. It consists of a basement and five upper floors.

BASEMENT

The basement contains many of the service departments for both the old and new sections, such as kitchen, food storage areas, laundry, and X-ray room. The X-ray room has modern equipment, and a qualified X-ray technician performs routine tasks such as chest X-rays for inmates on admission. Inmates having X-rays for suspected fractures sustained in physical encounters are referred to the downtown hospitals, usually St. Michael's or the Toronto General.

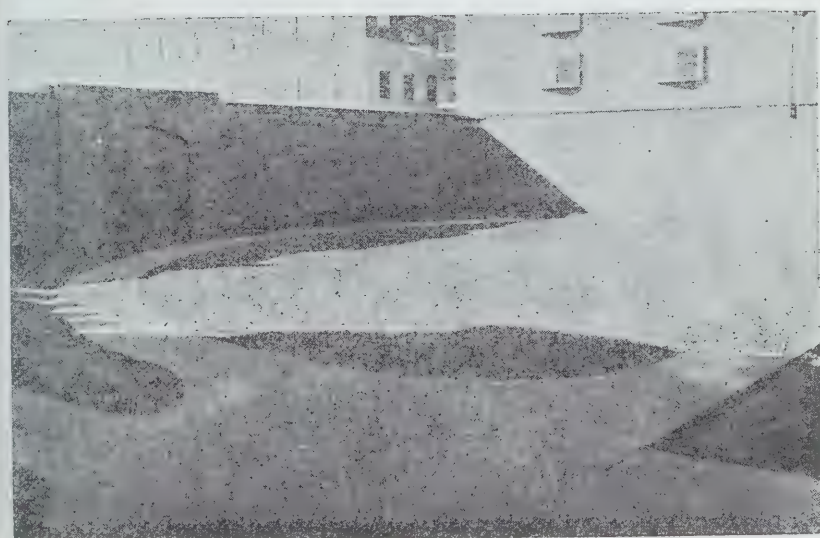
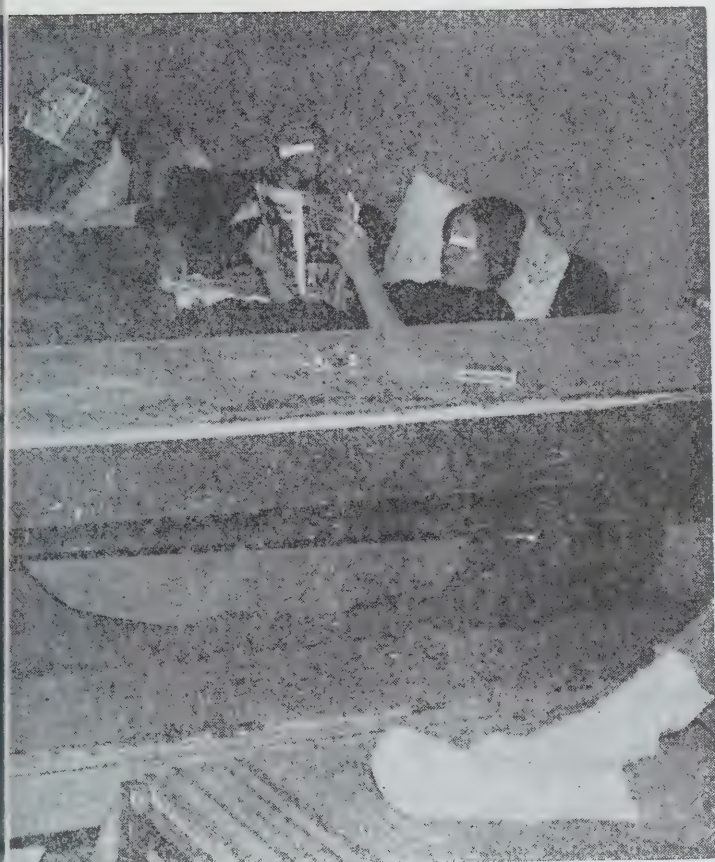


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14. A view of the hospital dormitory on the first floor of the old building. 15. Looking north outside Corridor 2 on the first floor of the old building, towards the entrance to the hospital dormitory. 16. The male exercise yard for the old building.



15



For cases requiring hospital care and attention, use is made of outside hospitals. Because of the jail's central location in a large city, it is not necessary for it to have its own extensive hospital wing, as is the case with more remote and isolated penal institutions.

When inmates require outside hospitalization, it is necessary to assign correctional officers as guards. This is one of the "outside duties" recorded on the assignment sheets.

Also in the basement area is the senior staff "dining room". This is a rather small plywood-walled room where regular jail meals are served to the Superintendent staff and the social service workers. It is modest in every way and, other than providing some degree of privacy, can hardly be considered as an amenity, even when compared with inmates' dining quarters in the more modern jails and institutions.

Certainly, those entrusted with the supervision of a large correctional staff and between 700 and 800 inmates deserve a better place to take meals and obtain some respite from the tension, cares, and tribulations of their work. This need, together with the need for a proper lunch space and lounge or rest area for senior officers as well as line officers, is covered in the Commission's recommendations.

There is no dining hall in either section of the jail. The inmates in the new section have their meals transported to them in a hot food cabinet (Figure 17). This is possible because of an elevator system in the new building. Contrast this with the meals hand-transported to the old section on trays carried by inmate "corridor men" (Figure 18).

Food in the jail was wholesome and led to no legitimate complaints. Some inmates mentioned that food in the old section sometimes arrived cold. Part of the joy of eating is the surroundings, be it a clean table or a picnic glen. Eating at old wooden tables in the even older day rooms of the old jail corridors cannot be as conducive to good appetite as even less desirable meals in more favourable surroundings.

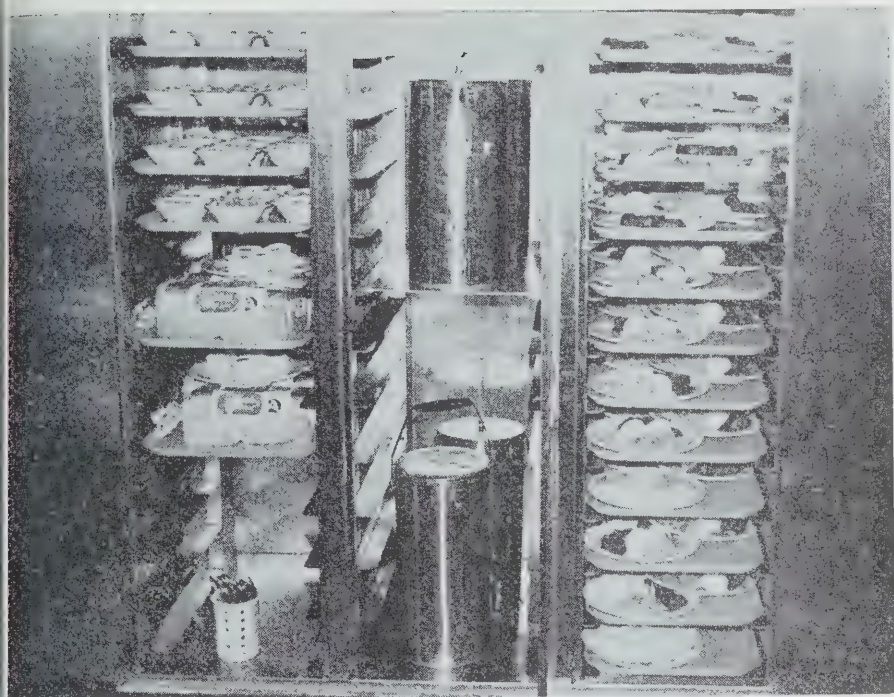
In the basement of the new building is the vehicle sallyport and admitting area for women inmates. Originally, only women inmates were housed on the fourth and fifth floors. In 1975, the northern part of the fourth floor was turned into a male psychiatric unit. Women inmates continued to use the southern part of the fourth floor as well as the fifth floor.

There are two elevator shafts in the new building, one for transporting female inmates and the other for males. These run from the basement through to the fifth floor of the new building. The "female elevator" has exits only at the main, fourth, and fifth floors on its upward journey from the basement. The "male elevator" has no exit on the fifth floor.

FIRST FLOOR

As has already been mentioned, public entry to the jail is now gained through the main door of the new section. Here are the control room and the public waiting room, through which the visiting rooms are reached. Figures 19 and 20 show the two sides of a visiting area in the new building.

On the main floor of the new building are the offices of the Superintendent and his deputies, as well as a general office and the office of the bail justice of the peace.

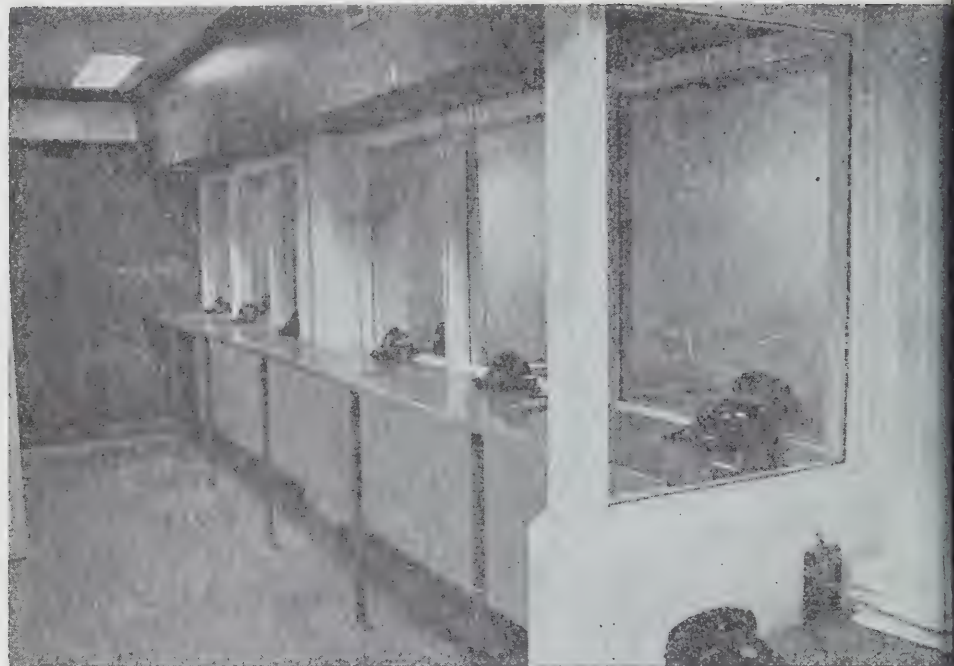


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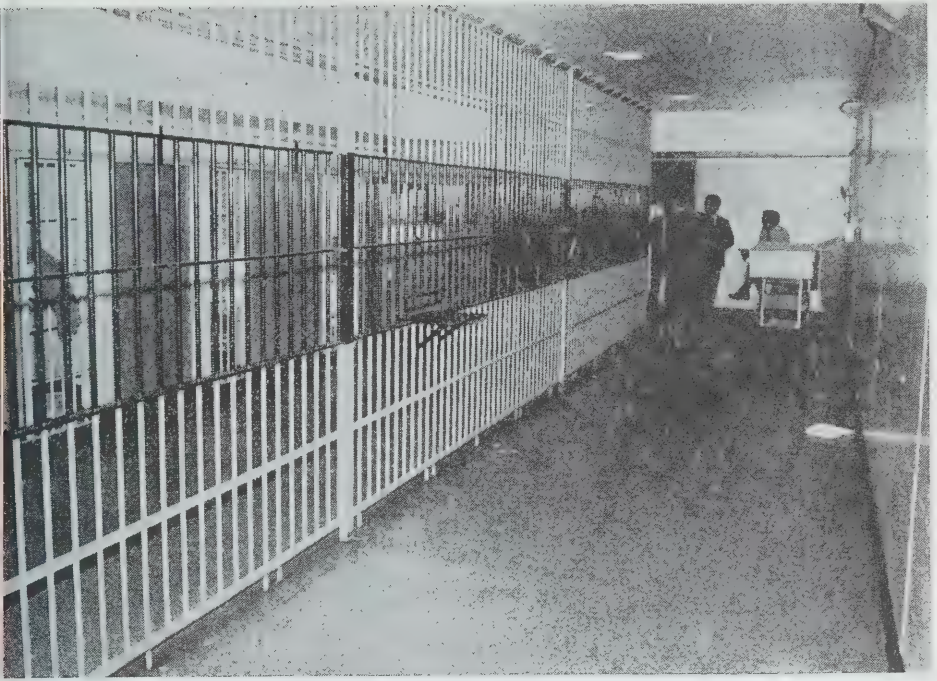
17. Food cabinet used to distribute meals in the new building. 18. Food tray used for the distribution of meals in the old building.



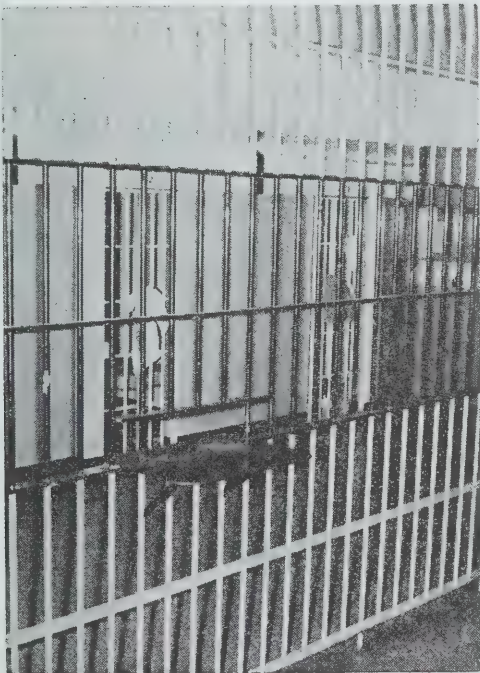
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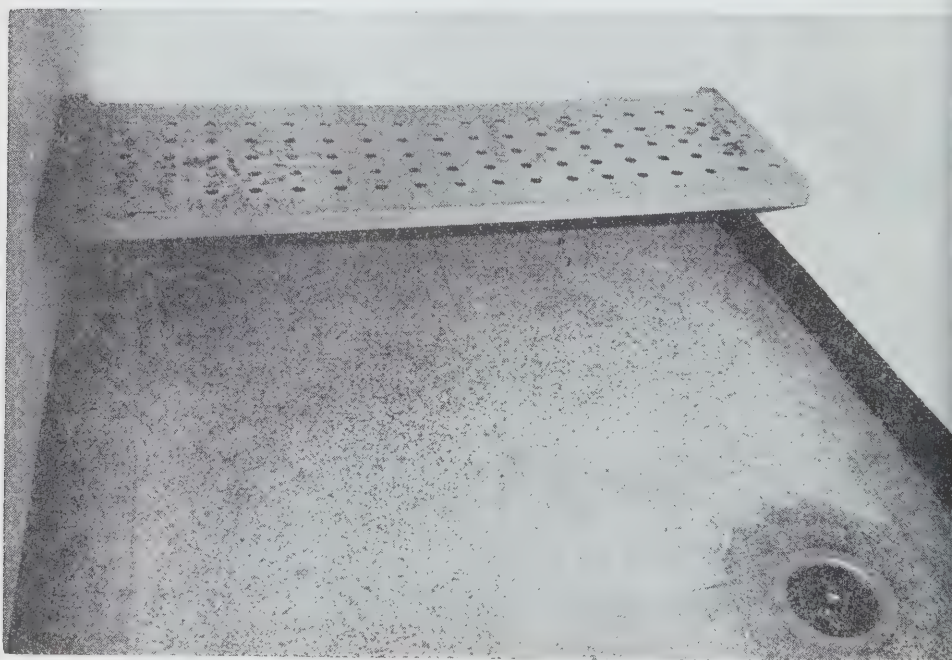
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19 and 20. Two views of the visiting facilities in the new building. 21. Looking west along Corridor 3A in the new building. 22. The “pass-through” in the grille of Corridor 3A.



23

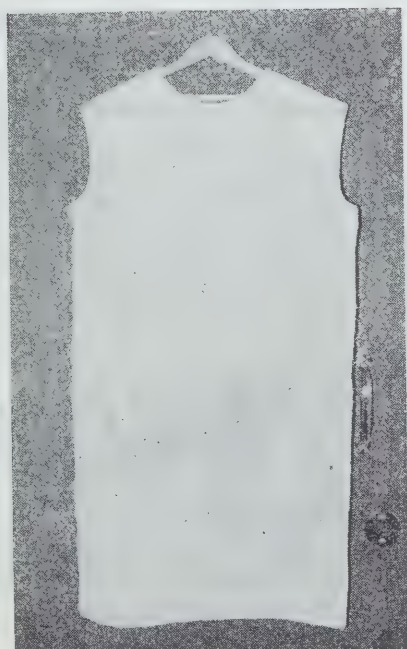
23. The entrance to one of the segregation cells in the new building, showing double doors. 24. Interior of cell No. 1 in the 3B segregation area of the new building, showing bed and toilet. 25. Male exercise yard on the first floor of the new building. 26. A "baby doll" outfit as worn by inmates in segregation.



24



25



26

At one time, what was called 1A hospital was on this floor. It contained the psychiatric assessment unit, cells, and a day room. With the removal of all women inmates to the fifth floor, part of the fourth floor was allocated for use as a male psychiatric unit and the space that was being used by 1A hospital when the Commission began its hearings was turned into much-needed office space, necessary for the proper administration of a complicated penal institution such as the Toronto Jail with its large and varied population.

The northern part of the first floor houses Corridors 1C north and 1C south as well as the 1B segregation cells.

Corridors 1C north and 1C south are identical. Each contains 18 large cells, each with its own flush toilet. 1C north housed inmates employed on kitchen duty. Because of their numbers, hours, and low security, it is possible to group some of these inmates two to a cell. 1C south is used for some of the protective custody inmates. At times, some of the cells in the new building are used to house two inmates, but, as will be seen when we are discussing the second and third floors, single occupancy is the general rule. At the far end of each corridor in the new building there are three showers as well as an additional toilet and wash basin.

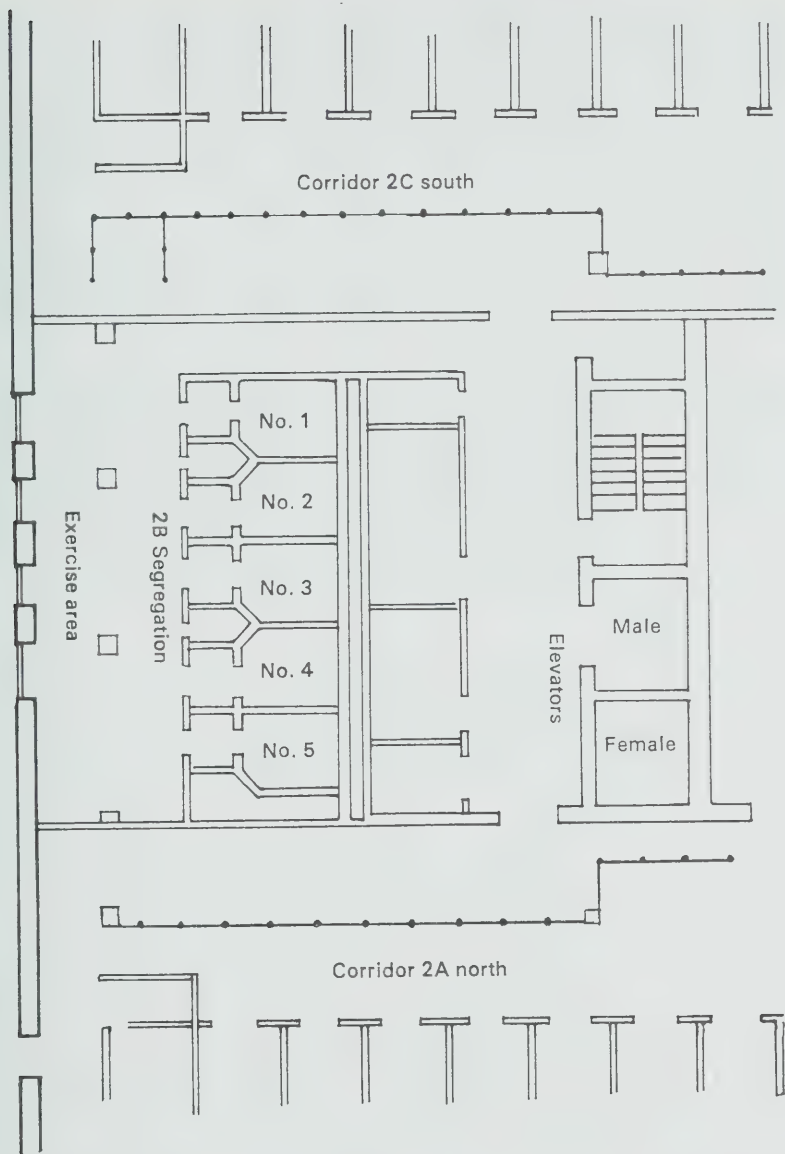
A "guard walk" along the perimeter of each corridor in the new building permits more efficient surveillance than the single observation point near the grille at the entrance of each corridor of the old building. Figure 21 shows a typical corridor area in the new building. The camera is in the guard walk to the right of the grille. Inside the grille is the day-room area and beyond it the cell block. A guard station, consisting of a high stool, a desk with corridor log, and a wall telephone, is shown in the background at the right. This photograph shows the width of the day room and the size of the cells. Figure 22 is a close-up of the "pass through" on a grille, used for serving meals and beverages. This type of pass through figured in the Jinks incident.

Corridor 1B contains four segregation cells. Between the outer door and the inner door there is a wash basin, and each segregation cell has an iron bed. Figure 23 shows the double-door arrangement, the inner door having a small window. Unless the inmate is very noisy, causing disturbance to others, the outer (steel) door is left open. Figure 24 shows the interior of a segregation cell with bed and floor-type automatic flushing toilet.

Also of interest on the first-floor level is the outdoor exercise yard, shown in Figure 25.

SECOND AND THIRD FLOORS

The second and third floors are identical in layout. Each has four corridors of 18 large cells with individual toilets. The corridors are paired, with 2A south and 2A north and 2C south and 2C north on the second floor, and 3A south and 3A north and 3C south and 3C north on the third floor. Encircling each pair of corridors is a guard walk similar to the one for 1C south and 1C north on the first floor. The shower arrangement is also similar to that on the first floor. Each corridor in the new building is entered by means of a sallyport, or double set of grille doors, controlled in such



Central area of the second floor of the new building, showing the elevators and the 2B segregation cells.

a manner that one door is always locked. The outer grille door leads to a passageway which, in turn, leads out through a solid door onto a central elevator landing. From this landing one may go south to the 2A corridors, north to the 2C corridors, or west to the 2B segregation cells. Also, off the landing there are three private visitors' rooms. These are used by visiting lawyers and social workers, and by members of the Superintendent Group for misconduct hearings.

Four of the cells of 2B segregation and of 3B segregation are similar to the four cells of 1B segregation. In addition, 2B and 3B have a fifth cell, often termed the "bridal suite". This cell differs from the other four cells on its corridor in that it has no bed. The No. 5 cell is used mainly as a punishment for the most difficult inmates.

A comparison between the corridor cellular accommodation of the two buildings gives rise to the observation that the new building is larger, cleaner, and more comfortable than the old. Ironically, the more dangerous inmates and those with more serious convictions tend to get the better accommodation, simply because the new building permits better surveillance. Its corridors are less crowded and have fewer inmates than those of the old building, and better control may thus be exercised. The cells in the new building are locked and unlocked by remote control and not with individual keys, as in the old building. There is, therefore, less need for correctional officers to enter the corridors.

Visiting the two sections of the Toronto Jail, one quickly notes the greater cleanliness and "cleanability" of the newer section. There is also less noise and less direct contact between correctional officer and inmate in the new building. Maybe because of this, some inmates indicated a preference for the old section. Some correctional officers, given a choice, would also prefer to work in the old building.

At times, it was an inmate's distinct preference for the old building that gave rise to a confrontation with correctional officers. Perhaps it was that he wished to be with friends, acquaintances, or cronies. Familiar surroundings, though noisy and with closer contact with correctional staff, were preferred by some to the quieter, impersonal atmosphere of the newer part of the jail. The choice was sometimes the other way round — in favour of the new building. It is doubtless these human differences that account for people in outside society preferring one way of life to another.

Before we leave the segregation areas, it might be mentioned that each contains, aside from the cells, a so-called exercise area. There was not one instance in all the cases cited of this section being used for any purpose other than ingress to or egress from the segregation cells. In this area the non-flammable, non-tearable segregation garments referred to as "baby dolls" were kept. It was in the exercise areas outside the segregation cells that some alleged assaults were made, particularly while an inmate was changing from "jail blues" to the segregation garment. Baby dolls are seen in Figure 26, hanging on the outer door of a segregation cell.

FOURTH FLOOR

This floor, which at one time was used exclusively for female inmates, now

accommodates females only in two of its four corridors. These paired corridors, separated from the remainder of the floor, are similar to the other corridors in the new building.

The other two corridors on the fourth floor (4C south and 4C north) now accommodate the psychiatric facility that used to be housed on the first floor. Here are quartered not only inmates who require psychiatric attention, but also inmates referred by the various courts for short-term psychiatric assessment. There are offices for the jail's psychiatric staff close to these corridors.

The reduction of the female space on the fourth floor was made possible by the housing of some female inmates at the Vanier Institute in Brampton.

FIFTH FLOOR

This floor is devoted to female inmates. It contains individual cells, a segregation area, a hospital area, visiting accommodation, a sizeable arts and crafts room comfortably furnished and appointed, as well as a rooftop exercise yard. Since none of the cases alleging the use of unnecessary force involved complaints by or on behalf of female inmates, it is unnecessary to go into further detail about the fifth floor.

Glossary of Terms Used by Witnesses

- Baby dolls** – non-flammable, non-tearable garment worn by inmates in segregation
- Biker** – motorcyclist
- Bit** – sentence
- Blue goose** – vehicle used to transport inmates from institution to institution
- Bridal suite** – No. 5 cell in the segregation area, which had no bed
- Bucket** – jail
- Come-along hold** – restraining hold in which the arms are held up behind the back
- Cop, copper** – correctional officer
- Corridor man** – inmate who has work duties and certain privileges
- Damper** – segregation cell
- Diddler** – child-molester
- Dome** – rotunda
- Elopement** – unauthorized departure from a minimum security facility
- Fill in** – to assault
- Freak out** – to overreact
- Get off on** – to get a boost or thrill from something
- Ghost train** – procedure of transferring difficult inmates from institution to institution
- Grey shirt** – junior correctional officer (C.O. 1 or C.O. 2)
- Gun someone off** – to give someone dirty looks
- Hole** – segregation

- Narc** – informer, undercover agent
Nut case – person needing psychiatric care
Open-hand – to slap on the face
Plant – undercover agent
Psycho – person who reacts violently for no apparent reason
Put the boots to – to kick
Range – corridor
Rangy – reacts violently for no apparent reason
Rat – to inform
Rehabilitate – to beat up
Remand inmate – inmate awaiting trial
Sallyport – secure, double-door arrangement giving access to the jail or to a corridor
Screw – correctional officer
Sleep-in – inmate who sleeps for his own protection in a segregation cell or elsewhere
Speeder – speed addict
Stir crazy – crazed by the tensions of confinement in jail
Sucker shot – unexpected blow
Tiddler – *see* diddler
Wheel – important person
Wheel in – to escort an inmate in a rough manner
White shirt – senior correctional officer (C.O. 3 and higher)

Allegations

Principal Allegations

Most of the allegations considered in this section arose directly out of the charges made by former correctional officer Gary Dassy and nurse Jane Mannerholm. The section also includes accounts of other allegations that came to light during the giving of evidence on the Dassy and Mannerholm charges. For further particulars, the reader is referred to Volume 1.

The Frost Allegation

(Frost picked up a .22 calibre starter's pistol and pointed it at the police officers.) "I said to myself either they are going to call my bluff and shoot me or I am going to have to get out of here. I'm not going back to the Don."
(James Frost)

"... wheeling and brought is two different things ... this was really something to see because he just went zoom in and out. ... Don't forget this was an experience, this all happened – even on TV they haven't got that, you know. Because when I looked up they just threw him there." (Inmate William Yurick, referring to James Frost)

"I have no way of knowing because there is no clocks there ... because one thing I don't want to remember in jail is time ..." (Inmate William Wallace)

"His eyes were swollen. Puffed ... I couldn't describe the scratches. They looked like scrapings of hands being run down the side of his face. His eyes were just about permanently closed. His mouth was swollen. Generally he was a mess." (Gary Dassy)

"[He was] to say the least, extremely reluctant. He was fighting against being moved. He was cursing, swearing, attempting to bite, attempting to kick, and attempting to break loose – attempting to strike any officer around him." (C.O. 5 Robert Nuttall)

"Frost hollered a challenge at everybody that walked past that area, but

anybody who would have taken advantage of this challenge would have been taking advantage of a 90-pound weakling, so I don't think any correctional officer in his right mind would take up the challenge . . ." (C.O. 4 James Doherty)

"He stood up as I entered the cell and I looked at him and I saw that he had contusions to both his eyes. Black eyes. Very much similar to a raccoon." (Superintendent G. Whitehead)

"There was no way he could comprehend or understand anything that I said to him . . . his thoughts were tangential. The colloquial term is 'spaced out'." (Superintendent G. Whitehead)

"I have heard more of brutality, I think, in the last three months, sir, than I have heard in 17 years in this business." (Deputy Superintendent A. Farquhar)

"Certainly, the structure has to go . . . it is archaic and it is certainly not conducive with the very thing I am trying to tell . . . You know, this distance that exists between the correctional personnel and the inmates. You can hardly draw them together in that . . . setting." (Deputy Superintendent P. Mulhern)

James Robert Frost was born on April 14, 1951, and was 23 when he appeared before the Commission. He was arrested on February 10, 1974, on a charge of criminal negligence in the operation of a motor vehicle, released on his own recognizance, and rearrested on May 9, 1974, on a detention warrant. He was also charged, on May 10, 1974, with theft over \$200 and possession of stolen property over \$200. His criminal record dated back to September 1968 and included offences of automobile theft, vagrancy, carrying a concealed weapon, and illegal possession of a restricted drug.

With reference to the allegations that came before the Commission, Frost entered Toronto Jail on May 10 to await trial on his pending charges. After the usual admitting procedures, he was lodged in Corridor 2 in the old section of the Toronto Jail. This corridor is usually used to house the more youthful inmates.

EVIDENCE OF JAMES FROST

The trouble started during an exercise period on May 26. All of the inmates of Corridor 2, except Frost and another inmate, Mark McPherson, were out of the corridor at the time. Frost stated that exercise was not compulsory.

He had taken his blanket from his cell, which he said was the third or fourth from the eastern end of the corridor, that is, the third or fourth from the entrance. There is only one entrance to the corridor and that is through a grille or barred swinging door at the eastern end close to the guard station and stairway.

During the daytime, the cells were locked to prevent inmates from remaining in them. On one of my visits to the Toronto Jail I was informed that this was primarily for security purposes; it permitted correctional officers during the daytime to keep all inmates under direct observation from the guard station at the entrance to the corridor.

Frost said he was able to reach between the bars and withdraw a blanket that was under his mattress at the foot of his bed, near the bars. He placed this blanket on the floor at the western end of the day-room section of the corridor and went to sleep. Another inmate, Mark McPherson (who Frost referred to as "Murphy"), was asleep on a bench in the same area.

Frost stated that he was awakened by "a guard . . . touching my feet with his feet". It was "just a slight nudge to wake me up". From a book of photographs of correctional officers, this correctional officer was at first identified by Frost as C.O. 2 Seigfroy John. Later, and much more positively, and using the same book of photographs, Frost identified the correctional officer as C.O. 2 Augustus Durball. Frost stated that he was incorrect in his first identification and that John had nothing to do with the incident.

Frost's mistake in identifying John rather than Durball was probably a result of carelessness and of not paying sufficient heed when looking through the photographs. The identification of Durball was quite positive near the outset of Frost's evidence and I am satisfied that it was his intention to identify Durball with the incident rather than John.

Frost related: "He asked me my name. I said, 'Frost, sir.' He said, 'Stand up.' I stood up and he said, 'You are not allowed to have blankets on the floor.' He said, 'You know that, do you? What do you think this is? A hotel?' and I said, 'No, sir.' By this time we were walking and he said, 'Come on up to the front. You are going on charge and you are going to the hole.' . . ."

Evidence was given that the rule prohibiting blankets or mattresses on the floor of the day room was later changed. This seems to be a sensible amendment to the rules in view of the limited number of benches in the day rooms. There were, of course, no chairs, and anyone who was unable to sit on a bench had no alternative but to sit on the concrete floor. Also, the complete lack at that time of any program resulted in boredom, to the extent that a great many inmates would lie down on the concrete floor to read, sleep, talk, or in some other way pass the time.

Up to this point it would appear that the matter could have been handled without any drastic action. Even if blankets were not allowed in the day room at that time, the correctional officer, using some understanding, should simply have reminded Frost that blankets were not allowed out of the cells and then ordered him either to return the blanket to the cell or to surrender it on the understanding that it would be returned in the evening at lock-up time. If Frost had then disobeyed, or become aggressive, a charge could have been laid against him. It would appear that a warning could first have

been tried prior to the laying of a charge.

The use of segregation for such a minor offence was, in my opinion, too strong a disciplinary action, and considering the tensions and pressures on inmates, one that might, foreseeably, cause a "squib" reaction. Apparently that was the situation in this case.

A more experienced correctional officer, or a better-trained one, would not have charged Frost but warned him that he could be placed in segregation for his offence. Other than the penalty of loss of statutory remission, the only other sanction that can be used against an inmate is segregation. The use of segregation for a minor offence can only weaken its effectiveness as a deterrent in more serious cases.

As they were passing through the grille door, it was opened by another correctional officer, C.O. 1 Nello Welsh. Frost recalled saying: "Come on, sir, don't be a [deletion]. I was only sleeping on the floor. The floor is cold." According to Frost, this resulted in Durball taking "a swing" at his head with his fist. Frost stated that he ducked and moved one of his hands to the side to ward off the blow, with the result that Durball's fist struck the grille. Frost alleged that Durball ordered Welsh to "hold" him, and that he was then held from behind. He attempted to shake out of the hold, and Welsh seized his hair from the back, pulling him to the floor.

Frost stated that while he was lying on the floor outside Corridor 2, that is, on the landing side of the corridor, he received, in the stomach, a blow from Durball's fist that had sufficient force that he was unable to catch his breath. He stated that he tried to crawl under the table at the guard station and was then kicked in the stomach by one of the two correctional officers. He was unable to say which one.

Frost said that he screamed when he was kicked, that he tried to cover his face with his hands, and that he was kicked again and started hollering. "After the first scream I heard footsteps. Lots of feet all around." He alleged that he was kicked several times. "Boots started flying everywhere and they were all over me." Although he added that he "caught glimpses", he was not able to identify anyone positively. He alleged that he was kicked in the rib cage, the back of his legs, the back, and the side and back of the head.

He stated that after the first scream he heard the riot buzzer. He said this was used "to call guards to an incident, to send for reinforcements, to restrain inmates, or something". He spoke of seeing inmate McPherson "jumping a pile of guards" and yelling, "Stop it. You are going to kill him." Then, "The boots had basically stopped on my upper body. They were just kicking my feet at the time. There was somebody holding my hair, [holding] my face up by the hair off the floor." He was unable to state who was doing this.

After he saw McPherson jump on the guards, he said, he was kicked again and, "That is all I remember, except for being picked up, or dizzy, very very dizzy. Everything was spinning. My memory doesn't work too well after that. I don't remember anything, just being very very dizzy and I felt I was moving. I was staring at the floor but in another room at this time. There was just a lapse." This other room was the reception room or cell



*James Robert Frost, photographed
on December 13, 1974. (Photograph
courtesy of The Globe and Mail,
Toronto)*

opposite Corridor 8.

Frost said that, at that time, he felt a pain in his stomach, and the right side of his face was badly swollen. "I got to my feet; there was a guard at the grille of this room. I remember saying things to this guard, calling him a bastard and a pig and saying other obscene things. I remember asking how many guards it took to do this to me, six or seven, and I remember telling him I am 110 pounds, I am five foot two, and I says, it must have taken big men to do that to a person you know. So this guard was getting upset. He said, 'Shut up Frost, or we will do it to you again', or 'We will give you some more', or something to that effect. I kept repeating these things and I said if anyone wants to come in and try it, one of you that think you are man enough to come and try it on me again, I says, come in, the invitation is open."

Frost indicated that there was only one guard outside the reception area at the time and that he (Frost) had issued this "invitation" to him. He said that the correctional officer outside the reception area was C.O. 2 Gordon Cameron, and that Durball then came to the area and ordered Cameron to open the grille to the reception room. Cameron opened the door, and Durball stepped inside: "I was still standing there with my fists ready and he came in with his fists ready, and we were circling each other. . . . I took a swing at him. I believe it hit him in the shoulder or the face."

Frost said that he was then pulled by the hair from behind by someone who had come in after Durball. He alleged that he was punched in the side by Durball and that there were several correctional officers in the reception room. He also alleged that he was punched by Cameron. He stated that he fell to the floor, or his feet were pulled from under him; that there were four correctional officers, one on each side of him, one in front of him, and one who had pulled his feet. "I was being kicked again. My head was being pulled up by the hair."

He said he believed that it was Cameron who was holding his hair. He was unable to say positively who was kicking or punching him. "There must have been more than four because I heard footsteps. They were calling me names . . . out of the confusion I heard, 'Come on, you bastard. Fight now. Let's see how tough you are . . .'" He stated that his face was being punched and he was unconscious. "I felt warm – warm all over. The blows were coming, and I didn't feel them any more. My whole body was numb. I felt very warm, and the next thing I knew everybody – everything stopped. I was staring at the floor and there was a pool of blood on the floor. I was lying flat on my face. I couldn't catch my breath." He said that he heard Cameron yelling, "Croak you [deletion]."

He noted that he was aching all over. "I could hardly see out of either eye. They were badly swollen up. All my teeth were loose. I tried to stand up. I couldn't stand up. I got to my knees and fell down. I tried again, and this time I did stand up with the help of the bench that goes around the room. . . . The grille was opened. A lieutenant [C.O. 5] came in . . . a white shirt."

Evidence during the hearings indicated that correctional officers with the rank of C.O. 3 (formerly corporal) and above wore white shirts with their

uniform of green blazer and grey flannels, whereas those below the rank of C.O. 3 wore a grey shirt with the same uniform. The executive personnel, Superintendent, Deputy Superintendent and Assistant Superintendents wore regular street clothes.

Frost was unable positively to identify the "white shirt". Mention was made of C.O. 5 John Moquin, C.O. 5 John Russell, C.O. 3 James Couper, and C.O. 4 Robert Nuttall.

Frost said that he could not recall the exact words used by the "white shirt" when he came into the reception room, which is, in effect, a cell area in that the entrance to it is a grille.

He stated that he believed the officer said: "'At it again, eh, Frost,' or something to that effect." Frost then stated, "I got my hand in a come-along hold where you twist the wrist." This hold is used to keep an inmate under restraint, particularly in moving him along. He was then led through the door of the reception room and taken to a stairway where Nuttall told him he could "either walk down the stairs under my own power or I could be dragged down by the hair". The stairway consists of concrete steps leading from the main part of the old building to the basement area. It is through this basement area, via a corridor, that the main traffic proceeds between the old and new sections of the jail.

Up to this point, Frost had alleged two separate assaults, the first as he left Corridor 2 and on the landing outside the corridor, and the second in the reception room. I have already suggested how the first incident might have been avoided, or at least defused.

As for the second incident, if Frost's recounting of it is correct, then it was a result of his challenge to correctional officers. Of course, such a challenge, if it occurred, should have been ignored and put in proper perspective.

As for Frost's allegation that Nuttall told him he could either walk downstairs under his own power or be dragged down by the hair, I can see nothing wrong in an inmate being advised of this alternative even if one were to consider it in the nature of a threat, for Frost could have adopted the first alternative, that is, to proceed down the stairs on his own power. He stated that he was "half carried and half walked". If this did occur, it was probably to move him along.

He was then taken through the basement corridor into the new building and brought into an elevator. He said that while the elevator was going up he was slapped in the face and told that he was "just like his old man". He was unable to say who slapped him, although the voice was that of Nuttall. The reference to "his old man" was to his grandfather who, he stated, had been a deputy governor or assistant deputy at the Toronto Jail. The slap in the elevator, if it occurred, constituted a third alleged assault.

He then entered the area of the segregation cells in the new building. He was not sure whether this was on the second floor or the third. The segregation cells on the second floor are referred to as 2B segregation cells. Those on the third floor are called the 3B segregation cells. The two groups of cells are identical.

Once the elevator had stopped at the third floor, Frost would have been taken into the exercise area. He stated that he was taken to the southern

end of it and told to remove his clothes. He said he had difficulty doing this, but, having been in the segregation area before, he knew the routine. He alleged that one of the correctional officers had to help him take his shirt off because he could not move his arms up. "I was still being held up some of the time," he added.

He was then given one of the segregation garments known as "baby dolls". This is non-tearable as well as non-flammable, for the protection of inmates in segregation who might attempt to harm themselves.

Frost was led into the segregation cell and the inner door was locked behind him. He stated that he had not received any blankets. He sat on the bed and then "laid down for a while. I was exhausted, completely exhausted. I felt my wounds with my hands, and worried about them coming in again and I don't know how much time passed."

While he was in the segregation cell "the guards came in from time to time to look in. Some ordered me to stand up so they could look at me. Some said 'What happened to you' and I didn't answer. I just kept to myself."

He said that this happened on five different occasions. He thought he was in the segregation cell for perhaps a day or half of a day before the first guard came to see him. He may have been doing his best to tell the truth about the length of the interval. If he was confused about it, this could have been a result of (a) poor recollection, (b) not having any watch or clock available, (c) boredom, (d) his injury, or (e) the fact that he slept for part of the time.

"I didn't feel so bad. I mean, my body, I could move it. It wasn't so stiff any more. I don't know how long I slept. I went to sleep on the bed . . . a guard came by and I asked him for a cigarette. I believed it to be [C.O. 1 Gary] Dassy but I could not say for sure."

The correctional officer, whoever he was, "said, 'I will be back in a minute' or something like that. He didn't come back so I felt like a cigarette and I was mad that he didn't come back so I started raising hell. If you get on the bed and jump on it it makes quite a bit of noise . . . it's a metal bed and, the one I was jumping on, it happens that it has a dome in it so the metal crinkles when you jump on it, and it crinkles down when you jump down and it crinkles up when you jump up.

"My feet were getting sore – well, it was cold also, very cold, so I pulled the baby doll over my knees and got into the corner of the bed and rested there for a while with my head between my legs. And after I rested, I done it some more – jumping up and down.

"I heard my name mentioned, 'Frost'. I thought they were going to come in and beat me again so I was raising hell . . . I got underneath the bed in my baby dolls . . . they would have a hard time getting me out to beat me. I waited. I was nervous. I was shaking.

"The door was opened. I heard a few – I heard some words exchanged. They weren't words [of], you know, guys coming in to beat me. They were kind words. I relaxed.

"At which time there was a blanket brought in, a segregation blanket, which was out of the same material as the gown. I was helped out from

under the bed and placed on the blanket."

Frost stated that he did not know who had come in with the blanket but there was a "white shirt", and eventually a nurse was called. "I couldn't see very well, I don't know who it was, really."

He stated that he was not treated in a rough fashion at that time. "They were concerned for my health. . . . When I realized they were there to help me, not to beat me, I sort of started raising hell again. I said that I am going to sue you. I want to speak to a lawyer. You have no right to treat a human being this way. I asked for a phone call. I asked for a letter to my lawyer."

While Frost was "causing a ruckus . . . a man came to the grille with a guard and he said 'What do we have here, a speed freak?' He was in a suit. He was not a jail guard or lieutenant or anybody I could identify positively."

Frost denied having any drugs of any kind on the day he was removed from Corridor 2. According to the Toronto Jail log books, the day of the occurrence was May 26, 1974. Frost stated that he had stopped taking drugs in 1968. At one time he had been spending \$30 a day on drugs. The medical file on Frost may indicate some discrepancy as to the discontinuance of drugs, particularly with reference to a date later than May 26, 1974. In any event, there was no evidence that Frost was on drugs on the day in question. He did state, however, that he was on tranquilizers at the time - phenobarbital, which had been prescribed and was being taken orally.

Frost said that he was taken out of the segregation cell. A nurse "administered medication . . . some sort of tranquilizer". Frost was not taken out of the segregation area, and when he was placed back in a cell it was a different one, without a bed. This is the type of cell that was referred to by Dassy and others as "the bridal suite". Cell 5 in the 2B and 3B segregation areas was of this type, providing a more severe kind of segregation for the more serious and violent cases.

Frost stated that he was asked if he wanted anything to eat, but he could not eat anything because his teeth were "all loose and some were falling out". He alleged that the injuries to his teeth were a result of the "blows" he received in the reception cell. He alleged that he had to have three teeth pulled because they had rotted and the others that were damaged "I just pushed them back in the holes they came out of. I actually had taken them out, spit them out, and put them back where they came from." This would certainly appear to be an exaggerated statement.

Frost did not complain of any ill treatment while in segregation, either physical or by way of "baiting or tantalizing or anything of that nature".

Frost stated that he was later taken out of segregation, dressed in jail blues, and taken downstairs to the shower rooms where he received his own street clothes. He was then taken to the "court" cells, where inmates were lodged overnight before being taken to one of the court houses.

Because of the overcrowding of the Toronto Jail and the demands on the staff, it was impractical, I was told, to take inmates directly from their individual cells to the vehicles used to transport prisoners to the various courts.

Such a procedure is used in other penal institutions, but in the Toronto Jail it would mean that correctional officers would have to go to the various

corridors in both the new and the old sections of the jail and individually escort inmates to the shower area where they would change into their street clothes for their court appearances. The correctional officers would have to ensure that each individual inmate was shaved (if he was not bearded) and had had breakfast before the transport vehicles left the jail. It was considerably easier for the staff to have inmates change into street clothes the previous day.

Frost could not recall whether he spent the night in the court cells or slept overnight in segregation before being transferred to the court cells. He said that when he was released from segregation he was brought to the Toronto Jail medical area where a doctor looked at him and said: "I can't do nothing for this man." Frost stated that this doctor felt his ribs with his shirt on. Frost alleged that he complained that his ribs and stomach hurt, and that he was urinating blood, and said that the doctor referred him to the Wellesley Hospital for X-rays. He also mentioned that on his return to the Toronto Jail he went back into segregation and from there to court without incident.

Frost said that he appeared in Willowdale Provincial Court. He added that his lawyer had seen the "deplorable condition" he was in and had requested that the leg-irons and handcuffs be removed before he was brought into the courtroom, but no one had the keys, which had apparently been left at the Toronto Jail. Frost said that he explained to his counsel what had happened, and representations were made to the presiding judge.

Frost was then remanded for psychiatric assessment at the Whitby Psychiatric Centre. On the way to Whitby, a stop was made at the Toronto Jail to remove the leg-irons and to pick up Frost's documents.

Frost was admitted at Whitby on May 29 and remained there for 28 days.

Frost stated that he "heard through people at Whitby, and my father and my brother and so on, that obviously nothing was being done about the investigation into my beating; and, fearing my return to the Don Jail, I absconded from the Whitby Psychiatric Centre".

He went to Toronto, to his brother's apartment. He and another inmate at Whitby "took a car without authority - it was a stolen car" and left it at his "brother's place".

The brother thought that the police would come looking for James at his apartment, so he gave James the keys to another apartment he had "just rented".

Frost testified that the police came while he was in his brother's second apartment. He picked up a .22 calibre starter's pistol and pointed it at the police officers. "I said to myself, either they are going to call my bluff and shoot me or I am going to have to get out of here. I'm not going back to the Don. That's what I was thinking . . . I wasn't going back to the Don. That's what I thought."

"They said 'We know who you are . . . we're taking you back to the Don.' I said, 'There's no way I'm going back to that nightmare.' One officer reached for his gun and I cocked mine and he says, 'I wouldn't advise that,' and then I restrained."

Frost stated that he had been in the Toronto Jail in 1968, 1970, and

"possibly '72"; that no physical violence had been used on him on those occasions; and that the only incident during those occasions was that he "threw a kick at a guard once and went to the hole for that". He thought that that was in 1972.

In 1968 and 1970 he was in Toronto Jail for approximately two weeks on each occasion and in 1972 for two or three days "for parking, for speeding tickets". In 1974 he had been in the Toronto Jail "five months in all". As a result of pointing the pistol at the police officers, according to Frost's recollection, he was sentenced on August 23, 1974, to nine months for having a weapon dangerous to the public peace.

After his arrest for pointing a firearm, Frost was taken to a police station, charged, and then taken to the Toronto Jail and placed in Corridor 2. He stated that he was in the jail about a week; that he was then taken to one of the booths in the rotunda that are used by lawyers, and that C.O. 6 Stewart Garrett then said, "I want you to sign these papers." Frost asked what the papers were, and he said that he was told, "You know what they are for. They are about that beating. There is an investigation."

Frost said that he signed the papers without reading them. He said that there were two set of papers and that it was not indicated to him that he was to read before signing. He said he felt threatened as there were "two guards . . . standing right there at the time. I just didn't want any more trouble so I did what they wanted me to do. I signed what they wanted me to sign."

I find it difficult to accept Frost's evidence in connection with the above statement of not having been given an opportunity to read beforehand what he was signing. I am of the opinion that he knew the content of the papers, at least in a general way, before he signed.

On being questioned by Commission counsel as to whether he alleged any assault on his arrest in connection with the firearm on June 16 and up to the time when he went to court on August 9, Frost's reply was in the negative. He served his sentence at the Guelph Reformatory in connection with that charge.

With reference to Frost's general medical history, he first alleged epilepsy, but later said that he had told a doctor that he did not have epilepsy. There is no evidence in the medical reports confirming epilepsy.

The doctor who examined Frost at Whitby six days after the alleged assault stated in a medical report that Frost walked normally when he entered his office, but afterwards complained of dizziness. Frost stated that he tended to stagger to the right. When asked to walk, Frost kept the right leg to the side, "dragged it and staggered". The doctor's conclusion was: "I feel to some extent he was exaggerating his difficulties, if not completely malingering."

On being questioned about this Frost stated: "I would not agree with him on completely making it up. It is possible I could have been exaggerating at the time."

Frost said that when he was examined by Dr. Simonik at Whitby two days earlier (June 4) he could have told Dr. Simonik that his behaviour was sometimes uncontrolled and that he had been in a training school on a few occasions. He denied that he told Dr. Simonik that he had been on drugs for many years stating: "I told him I was using [drugs] but I quit in 1968

when I quit the motorcycle gang."

He denied telling Dr. Simonik that he had "periods of epilepsy or brief periods of unconsciousness". He admitted that he might have referred to unconsciousness and added that he said: "I cannot stand being locked . . . in a small cell such as they have at the Don and I reacted to it at the time, yes, but nothing to do with epilepsy. I would throw fits of anger, but not epilepsy."

A person such as Frost could have a claustrophobic feeling when confined in a segregation cell where he would be wholly enclosed save for a very small window in a solid steel door.

Counsel asked: "Did you tell him that you would throw fits of anger, that they were not fits of epilepsy?"

To which Frost answered: "He says, 'What kind of fits?' I just said fits of anger. I get mad and start throwing the bed around and so on."

Frost said that [as a result of the alleged assault at the Toronto Jail] he complained of headaches, dizziness, staggering to the right, and back pains, and that they could observe that his eyes were badly discoloured and swollen. He also said that he had five bruises on his back and two on his right leg. X-rays taken were negative for any bone injury and indicate that he received no treatment for any bone injury.

An electroencephalograph taken on June 5 was interpreted as follows in the medical report: "It shows instability which is more than usual for a 23 year old, but it is not pathological. It does, however, raise the possibility of an epileptic diathesis, but not sufficient to make that diagnosis without the occurrence of a seizure and that there is no sign of focal lesion." This interpretation was by Dr. John W. Scott, an expert with many years' experience in reading electroencephalographs.

A questionnaire completed on May 29, 1974, at Whitby and brought to Frost's attention at the hearing indicated that his answer to the question, "Does criticism upset you?" was "To an extent, yes." And:

Q. Do you have to be on guard even with friends?

A. Yes.

Q. Do you always do things on sudden impulse?

A. Yes.

Q. Do you often get into a violent rage?

A. Sometimes when drinking.

At the inquiry, Frost added that he usually did not get violent "unless there is a drug or something similar". Otherwise he said he is "usually very tranquil".

Frost did not exhibit any violent rage or other strong reaction while giving evidence.

Dr. Simonik was not called as a witness and his statement was not subjected to cross-examination. He did make this observation in his statement: "He [Frost] makes no very distinct difference between legal and criminal actions." When this statement was put to Frost, he acknowledged that it correctly stated his opinion, and then said: "It doesn't matter what the law

says, if my conscience [thinks it is right] . . . that is right.”

Dr. Simonik also noted: “He is still drug-addicted despite the fact that he denies it. Empty vials with needles . . . probably cocaine were found in his possession at this hospital and the lack of drugs was probably the reason why he starts to run away from this hospital.”

Frost denied using any drugs, other than marijuana, while at the Whitby Psychiatric Centre. The medical diagnosis was “psychopathic personality”.

As for his physical condition, it was noted that “on admission he was found to have multiple bruises, ecchymosis [black and blue discoloration] around the eyes and on his back due to a beating in the Don Jail as he stated. X-rays revealed no fractures and no deep injuries. All other findings were within the normal range.”

From the evidence of the physical examination at Whitby, which is supported by witness William Yurick and others, it would appear that Frost did sustain multiple bruising about his eyes and back. I am of the opinion that this occurred while he was in the Toronto Jail in May 1974 during his altercation with the correctional officers. I would strongly doubt that these were self-inflicted. Whether they were caused during an attempt to subdue a difficult inmate or were by way of punishment is the real matter at issue and for consideration. As I mentioned earlier, I am of the opinion that the whole episode could have been avoided had Frost, who was prone to violent reaction, been dealt with differently during the initial episode in Corridor 2.

An interesting exchange occurred during Frost’s testimony under questioning by Commission counsel:

MR. BYNOE. It [the medical report of the Whitby Psychiatric Centre] says you were admitted under a warrant of remand for psychiatric assessment. And he describes your dress and he describes your eyes which you claim was caused by a beating while you were at the jail?

A. Yes.

Q. And he stated you were arrested and charged with stealing a car. But in actual fact it was your brother who stole the car and you were covering for him?

A. Yes, that’s correct.

Q. And then you went on to describe how you were being kept in the Don Jail and treated rather badly because your grandfather was at one time the Governor of the jail and had been a very strict disciplinarian; is that correct?

A. Yes, sir.

Q. Now . . . I would like you to tell me whether or not you told the doctor the following – this is the doctor’s words as recorded in his reports: “He . . .” – referring to you – “he claims that he was asked to take out the garbage at 3:00 in the morning and when he hesitated he was assaulted by one of the guards, following which he was placed in the hole. He states that he was kept there for two days and beaten further.” Now, is that what you told the doctor?

A. About my beating?

Q. Yes.

A. I don’t think so. I think I told him I was to take my blanket or something. I told him about it. At 3:00 o’clock in the morning, you are locked in your cell at 3:00 o’clock in the morning.

Q. Well, where would the doctor get this from, Mr. Frost, saying that you claimed that you were asked to take out the garbage at 3:00 o'clock in the morning and that when you hesitated you were assaulted by one of the guards following which you were placed in the hole and kept there for two days and beaten further?

A. It could have been I was lying, I don't know.

Q. Okay.

THE COMMISSIONER. What reason would you have for lying? Why would you concoct this story?

A. I would have to go back to the moment.

Q. Well, if the story that you told us the other day was correct, that this all started when you were lying in the corridor on a blanket, if that story is correct why wouldn't you tell the doctor that story?

A. I always thought I had during my whole stay at Whitby. It's possible I could have told him that, I don't know.

Q. It's possible you could have told him about the garbage?

A. Yes, just to get attention, or any number of things.

Q. Don't you think you would have received the same attention if you told him about the blanket?

A. I'm pretty sure I would have told him the truth, but it's possible I told him that referring to somebody else or referring to myself, just to get attention. It could be.

Soon after that, the following exchange occurred between Commission counsel and Frost:

MR. BYNOE. All right. Now then. Mr. Dassy has advised this Commission that he observed you in No. 4 cell in the segregation area and that you were covered in blood and bruised and your face was bloody and swollen and had scratches on it; that your eyes were swollen and puffed and it looked like the fingers of your hand were being run down the side of your face and that your eyes were just about permanently closed and your mouth was swollen and that you asked for a cigarette.

A. Yes, sir. I don't believe there was any scratches on my face. There has been none recorded.

Q. All right.

A. My face was badly swollen, though, I could hardly see.

Q. You recall when you were advising what had gone on in the segregation area in your cell that you indicated that you were really raising hell in there?

A. Yes, sir.

Q. And that you were jumping up and down on the bed?

A. Yes, sir.

Q. And that you were just making a lot of noise, is that correct?

A. Yes, sir.

Q. Now Mr. Dassy advised the Commission that when he went back to your cell he asked you what was the matter and he said at that time you were punching yourself, banging your head on the bed and scratching your face with your hands and that your fingers were apart and you were bringing them down

your face and it looked like you were doing it pretty hard. You appeared to be punching yourself in the face, and that you were banging your head.

A. On what?

Q. That you knelted on the floor and put your hand on the steel bed and you brought your head up and banged it down, forehead first, and you appeared to be hitting the bridge of your nose on the bed; and that when you were doing it, the whole jail heard it because the bed was hollow and that really it was a solid bed but it was thin so that you could hear the rebounding of the noise with that kind of force all throughout the third floor.

In addition to that, you had an unusual manner of breathing and then you got up on the bed and he described the breathing. It was short, like you could not catch your breath and that you were choking on something in your mouth or your tongue.

Now, Mr. Frost, when you were in the segregation area did you punch yourself in the face?

A. No, I did not, sir.

Q. Did you scratch your face with your hand?

A. No, sir, I described the way it happened in my report. I was jumping on the bed.

Q. Did you kneel on the floor and bang your head on the steel bed?

A. No, sir. It is possible I knelt on the floor because that is the only way – everything comes in under the door – you have to kneel on the floor to get a cigarette or to get anything.

Q. This is, as described, that you were kneeling –

A. There is no way that I was banging my head on anything.

Q. Just listen for a moment. Mr. Dassy said he observed you kneeling on the floor, facing the bed and that you had your forehead on the bed and you brought it up and brought it down with a great deal of force on the steel bed.

Now, did you do that?

A. It did not happen, sir, no sir.

As will be seen, Dassy admittedly attempted to show that brutality was used at the Toronto Jail by correctional officers on inmates, and he mentioned in his evidence information given to him in support of the allegation that there was excessive use of force on the part of correctional officers against Frost. Therefore, it was not in Dassy's interest to contradict these allegations or try to show that Frost's injuries were self-inflicted. There is, of course, the possibility of exaggeration in connection with Dassy's evidence. I found this on occasion, particularly when Dassy tried to dramatize and to focus attention on himself when giving evidence. On the other hand, I found, for the most part, that Dassy had a considerably better than average ability to picture and recall events. I am, therefore, satisfied that he did see Frost inflict some personal injury on himself. This may well have been for the purpose of causing a disturbance and getting attention and is consistent with other admitted attempts by Frost to get attention, for example, by inserting a razor blade in his rectum, by cutting a vein in his forearm with a piece of bone from a pork chop, and by slashing his wrist with a razor blade.

I am, therefore, of the opinion that some of the injuries evident to Yurick

and others at the Toronto Jail and to the doctors who examined Frost after the May episode, both at the Wellesley Hospital and at Whitby Psychiatric Centre, were self-inflicted, but I do not think this fully explains Frost's injuries, and I am of the opinion, as stated earlier, that some of them were a result of the altercation with correctional officers.

Frost alleged that some correctional officers looked in the window in the segregation cell door and sneered at him while he was there. He could not say whether Dassy was one of them. One of the reasons for the small glass window in the segregation cell door is to permit the correctional staff to observe inmates. This I consider to be a necessity from the point of view of protecting the inmate, even if from no one but himself. It may be that Frost imagined that the persons who were looking into his cell were sneering at him. If they were, then such treatment of an inmate would be not only unnecessary but beyond human decency. In the absence of any other evidence, in connection with this and with a significant number of other incidents, I conclude that this "sneering" was imagined.

Commission counsel asked Frost whether he had "problems over the years with respect to being belligerent or refusing to obey orders" in other institutions, to which Frost replied: "In my past, yes, sir, I have been under confinement and constant pressure doing this and doing that. I snap. I tend to snap. This is what I told the doctor. Under confinement in the cell, I throw fits, and I should have something to try and control my nerves."

This is mentioned not only as a possible insight into the witness, Frost, but to show the tensions and reactions that are experienced by some inmates confined to cellular custody, and it may be an explanation of the street expression "stir crazy".

Counsel referred to medical diagnoses in 1969 at the Neuro-psychiatric Clinic of the Guelph Reformatory, whose records stated that Frost was then on drugs and had "a behaviour disorder, conduct disturbance, severe personality disturbance . . . and must remain guarded".

In February 1969 Frost was diagnosed as a pathological and anti-social personality "given to excess fantasy".

At the hearing, Frost explained that this was when he was "just a pup" and "possibly from the drug abuse".

Counsel drew Frost's attention to parts of the psychiatric report from Guelph of February 1969 and read from the report as follows:

At any rate, he does indulge in a great deal of fantasy. He is very ready to state that he did not know that he was setting a fire to a newspaper in his cell, a few days ago, but he admits that he remembers sitting there with the lighter in his hand and watching the newspaper burn. This same technique is applied to a lot of things which he has done. It suggests to this examiner that while he may show signs of schizophrenia, one feels that much of this thought is purely purposeful technique to confuse the examiner. He is very happy to make a speech about his principles of loving everybody, except, of course, people who interfere with his way of life whom he calls sadists repeatedly and he readily admits that he loses his temper and becomes assaultive and destructive when people antagonize him. Actually, he brags about retreating under the

veranda of his father's home and setting fires there in order to keep him warm. His chief hates appear to be guards or other people in authority whom he invariably teases and baits and then complains when they react in a perfectly normal fashion. He also hates plastic persons which is his term to describe anyone who uses tact in order to get along smoothly with those about him.

And then again:

He indulges in a lot of self-dramatization and obviously feels that he is quite informative and entertaining. In spite of the fact that he indulges in a great deal of fantasy, I do not believe that he is really out of touch with reality. I think that he is correctly oriented, that his memory is good, but in his efforts to convince his audience that he is different from other people, he goes rather overboard. . . . There would seem to be no better label for this individual than to call him a pathological personality; anti-social personality with a tendency to excessive indulgence in fantasies.

When asked if he wished to make any comment on these quotations, Frost indicated that he had no comment. He did state, however, that since 1969 there had been changes: "Well, I can't say that it all happened overnight, but I can say there has been improvements."

MR. BYNOE. What about aggressiveness?

A. When I am met with aggressiveness, yes.

Q. You react to aggressiveness?

A. Yes.

Q. What about destructiveness?

A. No, it has been replaced with creativeness. I like to create things.

Q. What about lying?

A. I tell lies, yes.

Q. Stealing?

A. In an extreme case of anxiety and so forth it happens.

Q. Fire-setting?

A. No, it doesn't exist.

Q. Excessive indulgence in fantasy?

A. I don't fantasize any more.

Frost further indicated, by way of "marked changes", that he had held the same job for some four years. On cross-examination, Frost amended his four years' continuous employment to a three-year period.

Frost stated: "I do have a hobby, I like creating things, whereas before there was never anything like that. . . . I like building stereo cabinets for stereos, and carpentry work. I also built my motor cycle, my bike."

On cross-examination by Robert Carter, counsel for the correctional officers, Frost was questioned about the warrant that had been issued. He said that he had no excuse for not attending court on two occasions, other than that he had wanted to go to work instead. He said that by the time of the incident on May 25, 1974, he had been in jail for a month. He admitted

that it bothered him to be in jail. He got anxious, lost his temper, and broke things, and he was under pressure because his case had not been tried. He stated that nobody likes being in jail.

MR. CARTER. And you became angry with those people who were responsible for you being there; is that not fair?

A. Yes, you might say I was angry at my surroundings, yes.

Frost stated that he was asleep when there was a call in Corridor 2 for the exercise yard. He said that he did not know at the time that he was not allowed to have a blanket in the day corridor, and that there were other blankets in the corridor. He said he was upset about going to segregation: "I was going to go to detention for something so stupid . . . for having a blanket on the floor, which I didn't know nothing about until then, until he told me."

He admitted that he got excited but denied that he threw the blanket at the correctional officer. He said the blanket fell to the floor.

Frost stated that he had known McPherson only a week – just the time they had been together in the corridor.

On cross-examination he admitted to leaving the Whitby Psychiatric Centre on three occasions when he was there for observation after the May 25 incident. On two of these occasions he had stolen a car.

Frost admitted that he was "very inept" at Guelph and that his behaviour patterns were quite bad at that time. On cross-examination, he acknowledged certain collateral discrepancies in his evidence, both before and after the May 25 incident. He denied having inflicted any injury on himself since 1969. This, however, is not in accord with the evidence of Dassy as to Frost's behaviour in the segregation cell on May 26, 1974. Frost stated he did not recall inflicting any wounds on himself:

And I don't recall inflicting any wounds on myself. I recall jumping on the bed, distinctly, and I recall being asleep for a while, and I couldn't eat and that is it. Then, of course, being moved out because I was jumping on the bed, and raising hell, and I hid under the bed because I thought they were coming in to beat me again, and they took me out of the cell and put me in No. 4 [No. 5] and then after that took me downstairs to the Wellesley Hospital.

Frost stated that, when he was jumping on the bed before being transferred to the cell that had no bed in it, only one of the two doors was closed. After the transfer both doors were closed. He stated that it was completely sealed and there was no way that sound could escape "no matter how long you yell".

Later, Mr. Carter asked Frost:

Q. So I take it that you were in the habit of saying anything that you think will get attention to anyone who might confer attention on you, is that correct?

A. Not usually, no.

Q. No, but it doesn't bother you to lie in order to get attention, does it?

A. Perhaps it is stretching the truth.

An example of his "stretching the truth" was when he alleged that all of his teeth were loosened as a result of the assaults on May 25; that he pulled out the two front teeth, held them in his hand, looked at them, and then put them back in his mouth and they then continued growing. Later he stated that he only took one tooth out and put it back in again. This was further qualified when he said: "It wasn't attached except for the gum, except for this string . . . it could have come out had I pulled a little bit more." Finally he admitted that he didn't take the tooth out, hold it in his hand, and then put it back in.

Frost admitted to advising the newspapers that, as a result of the "beating" he had received on May 25, he suffered a collapsed lung. Mr. Carter's contention was that the collapse was spontaneous and was not referable to the May 25 incident.

Mrs. Patricia Peters, a solicitor appearing from time to time in substitution of Harvey Salem, counsel for Dassy, inquired whether Inspector Villeneuve, of the Department of Correctional Services, gave Frost an opportunity to identify any of the correctional officers by photograph or in person when he investigated the May 25 incident. Frost replied in the negative. "He asked me if I could identify them and I said yes. And he said, by name? And I said, no, not by name, by picture or by seeing them. I could go around the jail and pick them out. So he says, okay." Frost then stated that he was not given an opportunity to do so.

Mrs. Peters brought out the point, that, even if Dassy's evidence that the facial injuries were self-inflicted was correct, there was no way Frost could have injured himself in the back or in the rib area.

The questioning of Frost by Mr. Villeneuve was on May 29 after he was brought back to the Toronto Jail from the Wellesley Hospital and before he was taken to the Whitby Psychiatric Centre. In connection with the papers he signed at Garrett's request after the episode of the pointing of a pistol at police, Frost admitted that this was after he was returned to the Toronto Jail on June 16. Frost then added: "I was willing to forget the whole thing, serve my time, and get out."

There was some confusion over what it was that Frost had signed for Garrett. No additional statement could be found. However, a letter from J. G. Walter, assistant to the executive director, Adult Programmes of the Ministry of Correctional Services, to A. L. Farquhar, Deputy Superintendent, Toronto Jail, was produced. It referred to the investigation "into the circumstances surrounding injuries received by inmate James Frost while incarcerated at Toronto Jail" and stated: "Our internal investigation failed to establish sufficient evidence to support a disciplinary hearing." It went on to say: "Following the recommendation made in the investigation report, it would be appreciated if you would advise Mr. Frost that the Ministry is not considering any further action on this matter."

From evidence adduced at the hearing and the fact that, although searches were made, no additional statement supposedly signed in the presence of Garrett was found, it would appear that what Frost signed in Garrett's presence was an acknowledgement that he had been informed about the contents of Walter's memorandum of June 19. A copy of this letter was located and it bore Garrett's name, with a date, June 20, 1974. It did not

bear Frost's signature, but there was this handwritten note at the bottom of it, over the signature of Deputy Superintendent Farquhar: "Inmate Frost advised of the investigation 20 June 1974."

On further questioning, Frost indicated that he had also completed some legal aid forms in the rotunda, and it was suggested that these may have been the documents to which Frost was referring when he said he had signed something without having read it over.

Frost did sign a statement for Mr. Villeneuve on May 27, describing the May 25 incident. The statement is in the handwriting of Mr. Villeneuve, who indicated in his evidence that it was his practice to have such a statement sworn to on a Bible and the last paragraph contains an oath similar to a court oath, acknowledged and signed by Frost. A typed copy of this statement was filed as an attachment to Mr. Villeneuve's report of June 10, 1974, to S. Teggart, Director, Inspection and Standards Branch.

This report with its 15 attachments was filed as Exhibit 138. It was based on statements from inmates Frost and McPherson, correctional officers Welsh, Durball, Stafford, Nuttall, Moquin, Sleight, Dassy, Waring, and McLean, and nurse P. Cabon; and on documents including medical reports and prison records. The report concluded: "There is no doubt from the evidence of Dr. [P. A.] Dubelsten that inmate Frost was assaulted about the face. All staff members interviewed deny any knowledge of the assault. . . . It appears the assault must have taken place when Frost was taken from 2 corridor. . . . The description of the Correctional Officers given by inmate Frost as being his assailants, would fit the descriptions of Messrs. Welsh, Durball and Stafford. . . . Frost's solicitor . . . was not contacted in regards to the investigation."

It was the then Superintendent of the Toronto Jail, Gerald Whitehead, who considered it advisable that an independent investigation be conducted, in this case by someone other than the staff of the Toronto Jail, considering the nature of the allegation. I am in agreement with Mr. Whitehead's conclusion. He reported the matter to the Ministry and the investigation was launched. I commend Mr. Teggart and Mr. Villeneuve for proceeding promptly and expeditiously. The investigation appeared to have been conducted thoroughly and impartially. Nevertheless, there were certain aspects of it that concerned me.

Mr. Villeneuve's conclusion was that the investigation "failed to establish sufficient evidence to support a disciplinary hearing". Is this the conclusion that would have been arrived at by an outside body? I consider investigations by the Ministry to be necessary and important in connection with its running of jails. I consider that the Superintendent of the Toronto Jail should know about any suspected irregularities and either conduct his own investigation or call upon the Ministry to hold one. But, over and above that, consideration should be given to making provision for an independent review of such an investigation or inquiry by the proposed Toronto Jail Council or by the Ombudsman's office.

EVIDENCE OF MARK McPHERSON

Mark McPherson, the other inmate in Corridor 2 with Frost, was in the Toronto Jail for the offence of robbery involving a purse snatch. He had been unable to obtain surety in the amount of \$500 and, therefore, was not admitted to bail.

McPherson had a record of several prior convictions, such as theft under \$200, mischief, and theft of an automobile.

With reference to the events of Saturday, May 25, he agreed that he heard a call for "yard up", which he interpreted to mean that the inmates in the corridor had the option of going into the yard for exercise or remaining in the corridor. He chose to remain in the corridor and try to get some sleep. He stated that, like Frost, he had a blanket.

McPherson said that he had been in the Toronto Jail for a week prior to May 25, and he had not been advised that it was against regulations for blankets to be taken out of the cells during the day.

Frost and he were called out of the day area, McPherson stated, and he followed Frost and noticed that three correctional officers were getting rough with Frost. "I noticed that one of the guards grabbed him and started to hit him so I went in and there were three guards and they were all kind of around him in a circle." He said that Frost was struck a hard blow in the stomach with a fist at a time when he was "just outside the grille".

McPherson was asked to identify the three correctional officers from a book of photographs. He named two that he thought were present, but was in error in both cases. The weight of evidence from various sources indicated that the three correctional officers concerned were C.O. 2 Augustus Durbal, C.O. 1 Nello Welsh and C.O. 2 William Stafford.

McPherson stated that Frost was struck by all three "in the stomach with their fists and with their boots". He stated that Frost was struck three times with a fist while standing. The kicking was in the manner of "kicking a football", from "a couple of feet back".

McPherson stated that the blow to the stomach caused Frost to be "upset" and he "started swearing a bit. He got a little bit mad I would imagine." He said that the kick made Frost gasp: "After that, I come in and I grabbed one of the guards by the arms."

McPherson stated that the correctional officer who was identified as Stafford "turned around and hit me and I ended up with a bloody nose". He was taken to surgery, where the doctor gave him something for his nose. Then he was placed in the reception cell opposite Corridors 7 and 8.

Mr. Villeneuve, in his investigation report, stated: "When talking to McPherson his nose was swollen and he had scratches on his forehead. I asked how he received these injuries. He stated that he got them during the altercation . . . but didn't wish to complain about them as he felt the injuries were deserved. He states three guards were on inmate Frost giving him

what he deserved. That is why he got into the altercation."

In the signed statement Mr. Villeneuve obtained from McPherson, McPherson stated: "He was kind of out of it. So, I went to help him and try to pull off one of the guards and ended up getting myself in a hasslement. I got scratched on the nose and got scratched on the forehead."

In the signed statement, he specifically denied that he saw any of the correctional officers kick Frost: "They didn't kick him, sir, they were more or less on top punching him, sir."

Although McPherson stated before the Commission that he had no complaints about the correctional officers' actions towards him, he also said, "I just think there should be something done about it."

McPherson illustrates the philosophy of "live and let live" of many inmates, particularly those who have had some previous jail experience and who feel that if you abide by the rules you will not get into trouble and that if you breach the rules and are punished, or even assaulted, you are getting what you deserve.

McPherson said he was taken to surgery by the correctional officer who had given him a bloody nose.

This illustrates another point, that if blows are struck to restrain an inmate, then once the inmate has been restrained the correctional officer again takes a paternalistic interest in the inmate. It is sometimes necessary for correctional officers to use physical force to bring an inmate under control. The question is: Was more force used than was reasonably necessary?

It is easy for a tribunal, sitting in the calm of a hearing room after the event, to weigh with nicety the amount of force that should have been used and say that any force beyond that would have been excessive.

If Stafford did punch McPherson in the nose, did he do so under reasonable apprehension that McPherson was going to continue his physical assistance to Frost, with whom the correctional officers were already having an altercation?

When McPherson was taken to surgery, that was the last he saw of Frost for a couple of months.

Mr. Carter referred McPherson to the statement he gave to Mr. Villeneuve that Frost "wasn't kicked". McPherson admitted that his memory would have been better at that time than at the later hearing before the Commission.

EVIDENCE OF WILLIAM YURICK

William Yurick was born in May 1913. He was a rather precise gentleman who gave his occupation as that of a "construction engineer". He had committed only one offence, that of wounding, for which he was serving a term of six months plus two years' probation. Apparently the charge arose out of a domestic quarrel.

On May 25 he was in the Toronto Jail, in the medical dormitory to the

north of the landing outside Corridors 1 and 2. From the dormitory, a person could look through the grille of the entrance to the dormitory, and along the hallway to the guard station at the entrance to Corridor 2.

Yurick stated: "I was lying on my bunk or otherwise. I don't know what I was doing at the time, but there was a commotion at the other end of the hall and the person that was next to me . . . says look what's going on. I jumped up and I looked out the door . . . when I took a look I seen this person lying on the floor."

Yurick said there were three correctional officers with their backs to him blocking the figure on the floor, and there were two others there as well - five altogether at that time. "Two of the guards were away from the three."

Then: "... being the first time there when I seen it I was out of my mind to seeing it. I mean I never believed to see a thing happening that way, so I was in a terrible fright."

Yurick was unable to say whether the two correctional officers who were separated from the other three did any kicking. "I am not going to speculate." It was those who were in a group of three that he referred to as participating in the kicking. He stated that they were definitely using force. He related that some additional officers came down the stairs and turned and ran towards the altercation.

He said he was looking out of the hospital dormitory with three others, one of whom was Christopher Marshall. He was unable to state the number of new arrivals or the colours of their shirts. "... there were two guards came up to us and told us to disperse . . . but we didn't because they couldn't hit us or nothing because the bars were there and we were trying to see as much as we can."

It would be proper procedure for the correctional officers to try to keep a situation under control by having the other inmates move away so as not to get them excited, which could easily happen when they were witnessing any altercation between a correctional officer and an inmate, regardless of the cause of the altercation. The boredom of jail life causes inmates to move towards the grilles even when a visitor is walking through the jail. I have experienced this on several occasions at the Toronto Jail and elsewhere. It is partly out of inquisitiveness and partly to relieve tedium that even the smallest incident will attract some attention.

Yurick related that Frost was "grabbed . . . whether it was by here or by the hair I couldn't tell you because . . . my view was blocked . . . they were dragging him out" into the rotunda area. As soon as they were there they passed from Yurick's view. "While they were dragging, there was a couple of guys giving him the one-two . . . they gave him a couple of punches."

Yurick was unable to identify who administered these blows. He stated that Frost was being dragged out face down and that the blows were anywhere from the top of the head to the middle of the back. He estimated the kicking as lasting about 20 seconds; then there was "a little lapse of time by the time the other guys got there". He estimated "from the time the kicking started until he was out of my sight, the whole thing within a minute. Or less than a minute."

He stated that he had also "seen a bunch of guards surrounding someone

else” but was not watching and could not say about any application of force to this other person who, presumably, was McPherson.

A day or so later, Yurick said, Frost was “wheeled in” to the dormitory: “I used the term ‘wheeling’ as when you grab a guy and bring him in. That’s wheeling. That term is a jail term, don’t forget. I’ve been in jail and I’ve learned a little. . . . Brought is a little different, you know . . . you are just cuddling a guy. But wheeling and brought is two different things . . . this was really something to see because he just went zoom in and out. . . . Don’t forget this was an experience, this all happened – even on TV they haven’t got that, you know. Because when I looked up they just threw him there.”

Yurick stated that he observed Frost lying on his back on one of the beds: “The first thing I said, holy mackerel, look at him . . . slit on his eyes and puffed up. And you name the colours, they were there. I was so frightened, you know, it could happen to me. God help, the less I seen of it – but I couldn’t avoid seeing it, right? It was a frightening experience.”

In addition to Frost’s appearance, Yurick said that he was “grunting”. “The grunts that were coming out of him looked like he really was in pain.” Yurick stated that Frost was taken out of the hospital dormitory to court a day or two later.

Yurick said that while in the hospital dormitory Frost was complaining about his back being sore. He stated that he was not interviewed at the jail by anyone from the Ministry. From Mr. Villeneuve’s report it was clear that none of the inmates who were in the hospital dormitory was interviewed by him. It is possible that, had this been done, a different conclusion might have been arrived at.

Yurick indicated that the number of correctional officers that gathered outside Corridor 2 in answer to the alarm was “at the most 10”. He said he nevertheless had “a good view” and, “I seen the fellow right when they were kicking him.” As Frost was being removed from the area they were “giving a few added punches that they felt probably they were compelled to do . . . maybe the fellow attacked their brother officer or something like that”.

Yurick stated that when he later asked Frost what had happened after he was taken into the hospital dormitory, Frost indicated that somebody had pushed him and he bumped into a guard, and that was what started it.

EVIDENCE OF JOHN MEAGHER

Another inmate witness, John Meagher, was 24 at the time of giving evidence. He was in the Toronto Jail on May 25 awaiting trial on a charge of manslaughter, for which he was later sentenced to five years’ imprisonment.

He had been arrested on June 22, 1973, and so had been in custody awaiting trial for almost a year at the time of the occurrence.

Meagher stated that he witnessed an assault on Frost while Frost was

being led onto the landing outside Corridors 7 and 8 and at that time he (Meagher) was coming through the rotunda to the landing with the intention of going down the stairs outside Corridor 8. These stairs lead to the basement of the old building and to the corridor leading to the new building. He said that, at the time, he was helping the librarian, Henry Blum, who was a few feet behind him, and that he (Meagher) was carrying a box of books. He stated that he saw an inmate lying on the floor, and: "I seen a couple of boots thrown at him . . . a couple of guards were kicking him." Meagher stated that these guards were members of a "goon squad", and: "They were big, heavy set. . . . Goon squad members weighed anywhere from 200 pounds to 215, some 300 pounds."

He was unable to identify any of the correctional officers by name. "I was in the hole at least a half a dozen times on charges and I know the members of the goon squad."

Although he was unable to identify any of the officers that he said he saw kicking Frost, he did name the members of what he termed the "goon squad" as being correctional officers Hanson (Anson), Casey, Potter, Brown, Peake, and Chelminsky.

Meagher thought that at that time he had been working approximately a month and a half or two months in the library and he also stated that he knew Frost because he had met him two or three times while he (Meagher) was in custody.

The Frost incident occurred, according to documentation and other evidence, on Saturday, May 25. Also, it was definitely established that the alleged beatings of Frost occurred outside Corridor 2 and/or in the reception room outside Corridor 8. But Meagher was sure that the incident he witnessed occurred on a weekday and that it occurred outside Corridor 7, and he acknowledged that he did not help Blum on Saturdays or Sundays.

In further examination, Meagher showed that he was quite familiar with Frost's appearance and reasonably certain that it was Frost he saw being beaten by the "goon squad" outside Corridor 7. However, in view of the other evidence, I have no alternative but to conclude that Meagher probably did not witness any assault on Frost, and certainly did not witness the Frost incident under investigation by the Commission.

EVIDENCE OF HENRY BLUM

This witness was the librarian at the Toronto Jail, having taken a B.A. degree and a course in librarianship at the University of Western Ontario. He began his work at the Toronto Jail in September 1973. He worked five days a week, but never on Saturday or Sunday.

He did not know Frost, but stated that he knew John Meagher: "I used to get him books occasionally before, and afterwards he started working [for Blum]." He could not remember the incident Meagher said that he and Blum had seen. If the incident occurred on a Saturday, according to Blum's evi-

dence, he would not have been in the jail.

On examination by counsel for Dassy, Blum stated that during his travels within the jail, he never observed any kicking or beating by correctional officers. He said that he moved around constantly in the jail, spending an average of two to three hours a day in the corridors.

EVIDENCE OF WILLIAM GARFIELD WALLACE

William Wallace was 25 when he gave evidence. He had a record of theft and other charges. He was awaiting trial; the offence was not inquired into in order that the pending trial would not be jeopardized.

At the time of the Frost incident on May 25, 1974, he was in the hospital dormitory near Corridor 1.

Wallace stated that, at the time of the Frost occurrence, he was standing outside the grille leading into the dormitory. He was by himself, "waiting to get in". He recalled "a guard having an argument with one of the inmates . . . outside Corridor 2". He thought the correctional officer was Stafford, but was not sure. He then saw the guard "kind of" put his arms around the inmate, then "another inmate came out into the corridor. . . . He started arguing and trying to help his friend out, the one who was being grabbed . . . about two seconds later there was another guard there. Mr. Stafford was there. He was hitting the inmate who was grabbed."

Wallace identified the inmate who was "grabbed" as Frost, but was unable to identify the correctional officer. With reference to other correctional officers present at the same time, he identified some of them as: Joseph Furman, Martin Doherty, Thomas Turnbull, and Augustus Durball.

Wallace was slightly confused about the order in which correctional officers arrived at the scene, indicating that Durball was one of five or six who came from downstairs. He said that he saw Furman (to whom he referred as Appleton) running towards Frost and kicking him in the back two or three times. He stated that Furman also pressed the alarm button.

There is no similarity in appearance between Appleton and Furman, Appleton being considerably older. Furman indicated in his evidence that it was a type of "in" joke for other correctional officers to use Appleton's name.

Evidence was given that Furman was one of a group of correctional officers who came down the stairs to join the original three. According to Wallace, Frost was on the floor in or near the guard station outside Corridor 2 when Furman kicked him in the back, and it was at that time that McPherson ran into [the other two] correctional officers.

Although Furman was undoubtedly one of the correctional officers at the scene, the weight of evidence indicates that he was not one of the original three.

Wallace stated that "after the button was pushed [according to his evidence, by Furman] five or six guards came over and ran downstairs". It

therefore appears that Wallace was confused and that, if he was correct in recalling Furman as having kicked Frost, then it must have been after the five or six correctional officers arrived. If, on the other hand, he considered the kick to have been administered prior to the arrival of the five or six correctional officers, and if he was correct about the kick having been administered, then it must have been someone other than Furman who administered the kick. Having identified Stafford as the one who struck Frost, we are left with Welsh and Durball from the three original officers, according to the weight of other evidence. Welsh, being black, should not have been confused with Furman. It is possible that Durball may have been confused with Furman.

This points up the unreliability of some of the evidence in connection with incidents where correctional officers are misidentified. It has long been considered almost axiomatic that different people seeing an event will each describe it differently. Psychological experiments in a classroom atmosphere have also borne this out. This being so, one considers that inmates recounting events might be confused by having seen the same correctional officers on other occasions, but unless they came to know them well could easily confuse identities. This could be an honest mistake and I believe it was in Wallace's case. Added to this is the unnatural atmosphere of the jail and the lack of calendars and clocks, causing hours and days to tumble into one another unbroken by any structured program, and we can then see the care that must be taken in assessing the validity of the identification of a correctional officer on the evidence of inmates alone.

To this must be added the more deliberate errors of inmates, attempting to retaliate at, or take revenge on a correctional officer. The evidence of Christopher Marshall in the Frost incident was an example of this.

Wallace said that when Furman kicked Frost, Frost was "kind of on the side" and that the kick was to his back. He also stated that while Frost was being held down Durball started "kicking him in the face". At this time there was "a whole mess of guards", which Wallace had described as "about six". Durball was alleged to have kicked Frost in the face at least three times, "and he drew blood". Wallace stated that the force of the kicks was "very hard", and: "I don't know how to judge it. It wasn't that they were easy kicks but they wouldn't cripple you. I don't know how to judge something like that."

In considering the force of punches and kicks, one must use also the yardstick of plausibility. During the course of the inquiry there were many references to punches and kicks which, if they were administered with the degree of force reported, would in all probability have resulted in much more serious injury than was sustained. One must, therefore, in assessing the evidence, decide, firstly, whether the alleged force was used, and, secondly, whether the alleged kick or punch was in fact seen to be administered.

Wallace alleged that Turnbull then grabbed McPherson by the hair and "got him out of the way". Certainly it was important, in order to contain the situation, for McPherson, who considered that an injustice was being done to Frost, to be isolated from Frost. I have no criticism of the correctional officers, who adopted the most expeditious way of accomplishing

this purpose. Wallace stated that Doherty was punching Frost, but "it wasn't very hard", and "Mr. Stafford punched him a few times". He alleged that this was when Frost was down. Wallace stated that the blows on Frost, if they landed, were from the neck "down to his waist and his back. I only seen one or two. I seen arms going up but I couldn't see anything land." Because of the number of persons in the area, it appeared logical that if Wallace saw blows thrown he would not necessarily see them landing. As for Stafford's use of force, Wallace said he "saw him hit him pretty hard".

Frost was then up on his feet: "I think he was picked up, I don't think he got up by himself because he couldn't get up by himself." Wallace stated that he saw "Mr. Doherty punching Frost with his left hand and right" approximately five or six times. "Maybe one or two were on his face. The rest were on his chest or shoulders." This was when Frost was standing up. When Frost was on his feet, "a minute or two after that, all the guards stopped hitting Frost. Mr. Stafford was in front of him. He turned around with his arms stretched straight out and smacked Frost in the face . . . his hand was open." It was, according to Wallace, a very hard straight arm, but it didn't seem to have any effect on Frost. Wallace's evidence was to the effect that Stafford then moved the palms of his hands against each other "and smiled and made a comment about that was his exercise for the day". Wallace said that when Stafford smiled "he was looking at the 1 dorm and myself".

If this evidence is true it was, again, unprofessionalism on the part of correctional officers.

"A minute or two after that Mr. Stafford came up to the dorm and put his foot on the bar" and "wiped what appeared to be blood on his boot . . . just a few spots . . . on the toe". Wallace said that he didn't see Stafford kick Frost. He identified the blood as drops rather than a smear of blood. "Frost and the other kid were taken away." The next time that he saw Frost was when Frost was brought into the dormitory: "His face was all puffed up from the beating."

On the question of times, Wallace said, "I have no way of knowing because there is no clocks there . . . because one thing I don't want to remember in jail is time. . . . As I say, I am not counting days. I know I am not going to court until February, and that is all I am worried about."

Wallace, on cross-examination by Mr. Carter, stated that he got along with all of the correctional officers: "There's nobody I don't get along with." Wallace estimated that it was 15 or 20 minutes from the time he first saw Stafford until Frost and McPherson were taken away.

EVIDENCE OF MICHAEL ANTHONY WATSON

Watson was 17 at the time he gave evidence, in January 1975, and had been in the Toronto Jail from January 23 to June 10, 1974. He had turned 17 on August 3, so that he was only 16 when the Frost incident occurred. His

record included convictions for possession of stolen property under \$200, escape from lawful custody, theft over \$200, possession of a tear gas device, and possession of a weapon dangerous to the public peace, as well as carrying a concealed weapon. He stated that he was lodged in Corridors 3 and 4, which were the youth corridors, and that at the time of the Frost incident he was working on Corridors 7 and 8. He first saw Frost (at the time of the incident) in the reception area opposite Corridor 8. He indicated he saw "a bunch of guards" coming from the rotunda "running down 7 and 8 corridor". He said that he earlier saw guards put Frost in the "bull pen" (the reception cell near Corridor 8). He stated when he first saw Frost he looked normal, "like having no bruises on his face or nothing". He said that he had an opportunity to see Frost's face at that time and he remembered there were no bruises on it. He stated that more than five correctional officers went into the "bull pen" and "one of them was Mr. Casey". He added that he had no difficulty identifying this correctional officer. He also identified "from the back . . . Mr. Dassy".

He was sure of this identification, he said. He stated that he saw C.O. 2 Charles Casey holding Frost on the floor. Frost was kicking and fighting, while Dassy appeared to punch him.

Evidence was given later, and supported by jail records, that Casey was not on duty until the afternoon shift which commenced at 3:00 p.m. Further, Dassy, similarly, was not on duty until the afternoon shift.

The attendance register indicated that Casey and Dassy did not come on duty until 2:20 p.m. Evidence indicated that the Frost incident occurred in the morning.

According to the report of Mr. Villeneuve, the time of the incident was 7:30 a.m. It is worth noting that Frost, in his statement to Mr. Villeneuve, referred to the incident taking place "during the morning shift". Frost's admission to the 3B segregation cells was documented at 9:10 a.m. Durball referred to the incident as being "at about 9:20 a.m." Nuttall stated that he responded "in the direction of 1 and 2 corridor" at about 8:30 a.m. Mr. Moquin believed that the alarm went off "at about 10:00 a.m." McPherson, in his statement to Mr. Villeneuve, referred to the time as being "about 10:30 a.m."

It would therefore appear that Watson was in error in identifying Dassy and Casey as being the correctional officers in the "bull pen" with Frost.

In view of Watson's confident identification of Dassy and Casey, one questions the reliability of his evidence. The most that might be inferred from Watson's testimony is that he saw certain events in the "bull pen" and was mistaken in the identification of the correctional officers involved. If one interprets Watson's evidence in this light, then he saw a correctional officer "holding Frost down on the floor . . . with his hands and knees". Frost was kicking and fighting, and a second correctional officer was "throwing punches" with a closed fist. Watson was not able to say whether these blows landed.

As for the other correctional officers in the "bull pen" at the time, Watson was unable to say anything about them other than that they were "grey shirts" (C.O.1s or C.O.2s). He was unable to identify them or to say what

they were doing.

Watson then left and went about his cleaning duties. He stated that he saw Frost about a week later when Frost was going to court and "that his cheeks were swollen out and eyes both black, and his lips were busted".

On cross-examination by Mr. Carter, Watson stated that in addition to there being no marks on Frost when he saw him "being placed in the bull pen", there was no blood on him and "nothing to indicate that he had been kicked in the face or anything of that sort". On further questioning, Watson indicated that it was the right half of Frost's face that he could see.

Watson also stated on his cross-examination that, when he first saw Frost, Frost was standing outside the reception area waiting to go in and that he was not being held or pushed but was simply standing there "in a relaxed position".

Certainly, the evidence of Watson, if accepted, would tend to negative any injury to Frost's face as a result of anything that occurred prior to Frost's entering the reception cell, and would also tend to indicate that at the time of entering the reception cell Frost was, to use the witness's word, "relaxed".

Was Watson's evidence in connection with Frost's appearance and manner at the time of entering the reception cell any more reliable than his identification of Dassy and Casey?

EVIDENCE OF MICHAEL JAMES PATRICK O'HANLEY

This witness was 17 at the time of the Frost incident. Reference was made to two convictions for breaking, entering, and theft, and possession over \$200, for which he was sentenced to 15 months, and one for theft of an automobile for which he received a nine-month sentence.

O'Hanley was in the Toronto Jail at the time of the Frost incident and was in the visiting area which, at that time, was in the eastern end of Corridor 8. He placed the time of day as "the morning time". He was receiving a visit and during that time he "heard a bunch of screaming. I heard some yelling and screaming . . . it sounded like a male."

He said that he looked out of the visiting area. There was only a half door at the entrance, and he looked underneath this half door in a westerly direction towards the reception cell, and "I seen a bunch of guards kicking, a bunch of feet; that's all."

He alleged that somebody on the floor was being kicked and he couldn't tell who it was. He said he could tell that the guards were the ones doing the kicking because he could see their "grey pants and boots" and "I just took a fast look. I didn't count them." He estimated that four or five of them were inside the reception room. When he finished his visit, he said, he saw some blood on the floor of the reception room. He "just took a fast look . . . 10 seconds".

O'Hanley said he observed Frost the following Monday: "He had a couple of black eyes and his face was swollen."

He stated that after his visit, when he looked into the reception room, there was no one there, but there was blood "in the middle of the floor".

O'Hanley stated, on cross-examination, that he heard the shouting and screaming near the end of his visit. He stated that the benches in the corridor were on the table and indicated that there was nothing to obstruct his view. He said that three other inmates were having visits at the time – a total of eight persons visiting or being visited – and that the others would have had an equal opportunity to see what he saw. He did not think that he had told any of the correctional officers what he had seen.

Mr. Bynoe explained that it was as a result of the Commission's investigators speaking to other persons that O'Hanley's name was ascertained.

EVIDENCE OF CHRISTOPHER ANTHONY MARSHALL

This inmate presented a good appearance at the hearing and was well spoken. Until cross-examination by Mr. Carter, his evidence appeared to be quite credible concerning certain events he claimed to have seen. He did not claim to have seen everything but often stopped short of complete recall. This led to an impression of a witness carefully relating what he knew and nothing more.

At the time of the Frost incident, Marshall was facing three charges of armed robbery. He was later convicted and given six-year concurrent sentences on two of the charges and four years concurrent on the third charge.

Marshall was born in London, England, and was 27 at the time of giving evidence. He candidly admitted to a record in England dating back to 1966. These offences included: larceny in a dwelling house, possession of a firearm within five years of release from Borstal, housebreaking and larceny, theft, burglary, and abduction.

Marshall stated that he had a bachelor of arts degree, and at the time he gave evidence he was teaching in one of the penitentiaries. He was an inmate at the Toronto Jail from April 5 to September 27, 1974, a period greatly exceeding the average inmate's stay at the Toronto Jail (10 days).

Marshall stated that he was doing "unofficial" work in May 1974 in the hospital dormitory, where he had been placed because of his depressed state by reason of personal and social problems: "I was not given the duties. I took them, since there was nobody in there . . . I was the only able person. The rest of the patients in there were either epileptic or broken legs or something." He stated that the duties that he assumed were: "Making beds, changing beds, bathing patients", and that "since there was no objection from the administration" he had taken that as approval in itself.

He recalled inmates Yurick and Watson being in the dormitory at the time,

as well as Wallace. He was not specifically questioned as to whether Wallace was outside the grille to the dormitory. He stated that he saw a "guard pulling Frost's hair" but he was unable to identify the correctional officer: "Frost was screaming, I couldn't make out his words, for the guard to let go of his hair. The guard wouldn't let go. He had hold of it with his left hand apparently down and was hitting him with his right . . . a clenched fist."

He stated that the blows were "very rapid". He stated that he saw McPherson jump on the correctional officer's back. "There was a lot of shouting and guards started to arrive . . . as they arrived they did not stop to ask questions. They just took part in the fracas." He related that when the second correctional officer arrived "he just waded in", and that correctional officers then arrived in twos and threes. "Frost was still being held by the hair and he was being punched . . . He was shouting 'stop it . . . what's going on? What have I done?'"

Marshall said that every one of the correctional officers hit Frost and that one of them kicked him and that the kick struck Frost in the face, and: "He went limp. He went down on one knee. It was at this time he was carried away." Marshall indicated there were "15 guards around one person". He identified the one who did the kicking as "a black guard" who was "so big and he was running so fast". He stated: "When the black officer arrived and kicked Frost, I heard no more screaming . . . I counted 15 as they arrived."

Marshall stated that there were three or four other inmates besides himself at the gate of the hospital dormitory. He estimated that the striking of Frost continued for "about three to four minutes". He said that he did not see Frost hit anyone, and that when the "white shirt" arrived the beating stopped. He stated that the "white shirt" was C.O. 4 Robert Nuttall. Marshall said that he observed Frost as he was taken away, and: "He was limp."

Marshall stated that he saw fists raised to McPherson, "but I never saw them connect so I couldn't properly see him". He stated that McPherson was struck more than once: "A number of times." He was unable to name the officers who struck at McPherson.

Marshall said that he later saw Frost in the hospital dormitory and at that time he had "two very black and swollen eyes, bruised cheek and nose. His lip was not badly swollen but slightly cut. Knocked about is all I can describe him."

Marshall identified the black correctional officer as C.O. 1 Nello Welsh and he said he overheard Welsh say: "That was a good show. I really got him."

In his evidence, Marshall had indicated that when he first saw Welsh he was running out of the rotunda. As Welsh was one of the original three officers at the scene, and since there was no other evidence that Welsh left the scene to fetch reinforcements, Marshall's identification of Welsh cannot be accepted. Nor can Marshall's evidence be accepted that Welsh came out of the rotunda, running, and kicked Frost.

Marshall was unable to ascribe any particular act to Nuttall. He stated that, with the exception of Nuttall, every one of the 15 that arrived struck Frost. According to Marshall, those who participated were: Lord, Morris, Peake, Thompson, Sills, Allgood, Cameron, Sleigh, Anson, Furman and Cockburn.

Marshall stated that another "white shirt" arrived later, and he identified this person as C.O. 4 George Wilson. He did not allege that Wilson did anything to Frost. He also said that a third "white shirt", C.O. 5 Vassos Zodiates, was there and that he did not see him do anything.

Marshall stated: "In fairness to Mr. Nuttall, he showed more responsibility towards the inmates than others. It seems to me that any incident, no matter how small it is . . . is blown out of proportion. And, the measures are always taken to extremes."

With reference to this statement of Marshall's, evidence was given from time to time during the hearings that, in order to contain a situation that has arisen, it is necessary to bring sufficient numbers to bear that the incident can be fully controlled. I, therefore, have no criticism of having a show of force or of having a number of correctional officers attending, to control a situation. I think that at times this is the only way an incident can be dealt with. Also, when the alarm is sounded, or reinforcements called for, it is impossible to say how many are needed. It is better to have too many than not enough.

In his examination, Mr. Salem asked Marshall:

MR. SALEM. So that there were times and there were areas during this fracas that you couldn't see?

A. No.

Q. Your vision was blocked; is that correct?

A. That's correct.

Q. And that is from the people that were between you and Frost off and on during that time and is it fair to say that people were moving, guards were coming in? It was a very active scene?

A. It was.

Q. So are you saying that every blow that was struck or that was intended to be struck that you saw?

A. Yes.

On cross-examination by Mr. Carter, Marshall admitted he had seen a psychiatrist on one occasion, as a result of which he was transferred to the hospital dormitory.

On the matter of identification, Mr. Carter asked:

MR. CARTER. With respect to the identification of all of the officers or all the photographs that you have pointed out, do I understand that you were given the book and had lots of time to go through it and make a careful study and attempt to test your recollection as to who it was that might have been involved?

A. Yes.

Q. How long did that take, do you recall, approximately?

A. I was with the investigating officers about an hour.

Q. . . . How long did it take to go through the book?

A. About half an hour.

Q. . . . So the other half of the hour was taken up by relating to the investigator what it was that you said that each of these individuals did?

A. That is correct.

Marshall also related a second incident that occurred approximately two weeks after the Frost incident, involving an inmate 16 or 17 years of age: "He was about 5 foot 8; weight about 130 pounds. Thin faced. Fair. Shoulder-length hair."

Marshall stated that while a group of young inmates were going towards the exercise yard, a guard called to this young inmate: "Hey you, come back here", and indicated that he should go into the storage room located opposite the guard station, outside Corridor 1.

He stated that the inmate then started shouting: "No boss, no boss", and that "the guard grabbed hold of him and pushed him into the storage room closet . . . I heard him screaming . . . he was shouting 'I am sorry' and 'No boss, no boss' all the time . . . I heard the brooms and mops falling from the wall." Marshall said that it lasted "about a minute, a minute and a half". He stated that after that "it went quiet and the inmate just came out of the storage room . . . his face was red and he was crying and his eye was swollen and blue". The correctional officer was identified as C.O. 2 Dwight Sleigh.

Marshall, on cross-examination, placed the Frost incident "before 9.30" and agreed that "it would be some time around nine o'clock".

Mr. Carter then went on to prove by documentation that of the correctional officers mentioned by Marshall as being present at the Frost episode, C.O. 2 Arthur Lord was not on duty at the time.

Marshall stated: "I told the investigating officer I had been in jail a long time and faces were familiar, and some of them I just wasn't positive about and I could have associated [them] with . . . some other time or place." There was a dialogue between the Commissioner and Marshall on the matter of identification, and the transcript of the proceedings indicates that the importance of identification was brought home to Marshall.

Then Mr. Carter asked Marshall:

Q. Is there any other photograph that you identified this morning that you have any doubt about?

A. No.

Q. None?

A. None.

Q. All of the other 14 you are positive of?

A. Yes.

It was then shown by Mr. Carter by reference to the daily attendance register and monthly duty record that C.O. 2 Frank Morris was not on duty at the time. Marshall had no explanation for this discrepancy, maintaining that he saw Morris and adding, "Very few people look like Mr. Morris."

With reference to C.O. 2 Joseph Peake, records showed that he had not signed in to the Toronto Jail on May 25 until 2:30 in the afternoon.

Q. Is there any reason why you could have made that misidentification?

A. No, none whatsoever.

Q. To be fair to Mr. Peake, he has a rather distinctive appearance as well?

A. I know Mr. Peake.

C.O. 1 George Thompson signed in at 2:20 p.m. working the 3:00 to 11:00 shift and there is no record of him having worked from 7:00 to 3:00. When Marshall was asked if he had any explanation for that, his answer was: "No, none, whatsoever."

C.O. 1 Alexander Sills signed in at 2:55 and also did not work the morning 7:00 to 3:00 shift.

C.O. 1 Richard Allgood, who was acknowledged by Marshall to have a distinctive appearance and who was known to Marshall, did not commence his employment until June 3, 1974, to which Marshall finally acknowledged: "He couldn't have been there."

C.O. 5 Vassos Zodiates, of whom Marshall said he was not sure whether he was there, was shown by the records to have been off duty on May 25.

C.O. 2 Peter Anson, to whom Marshall stated he spoke on the morning of May 25, was shown by the records to have been off that day by reason of sickness.

Since the records are used for payroll purposes it is inconceivable to me that a correctional officer would fail to sign in. If he took ill during a shift there would still be his signature showing when he came on duty. Marshall is, therefore, incorrect in identifying Anson as the correctional officer with whom he spoke.

C.O. 4 George Wilson was shown to have been the shift supervisor on May 25 for the 11:00 p.m. to 7:00 a.m. shift. He was not listed as being on duty during the 7:00 a.m. to 3:00 p.m. shift and the monthly duty record showed him as on duty only at night, and therefore he was not present during the Frost episode. Marshall indicated that he was not sure whether Wilson was the other "white shirt" present at the time, but did mention his name.

Marshall also appeared to become less sure of his evidence with reference to C.O. 2 David Cockburn and on cross-examination he stated that he was not sure. The documentary evidence indicated that Cockburn was on outside hospital duty on May 25.

In summary, Marshall stated: "I will stick with my identification . . . even though the records show they were not there."

Marshall was placed in the difficult position of having to maintain his identification in the face of the records or claim that the records were rewritten. I reject the latter suggestion most categorically, as this would have involved a complete new attendance register to which all persons concerned would have had to be a party, by re-signing false records. There were 230 signatures in all, each officer signing when coming on duty and when going off. I am satisfied that there was no such conspiracy involving so many correctional officers for the purpose of preparing false records, and, indeed, such false records would have had to be prepared prior to Marshall's interview by the Commission's investigators.

The discussion in connection with the identification continued:

THE COMMISSIONER. Would you see people – you would see these guards

several times a week, maybe several times a day?

A. Yes.

Q. And isn't it therefore quite possible that in trying to relate them to this incident ——

A. That I would associate them with others?

Q. Yes.

A. Yes. I said that.

Q. Or that you might have ——

A. In fact I said that to the investigating officer, that it could be entirely association.

Q. Yes. You see the injustice of a correctional officer being accused wrongly of being present and participating ——

A. If I identified him and I was wrong, but in the case of Mr. Anson I know I am not wrong. I just know I am not wrong.

MR. CARTER. Apart from Mr. Anson then, do you agree that you might be in error?

A. I could be in error on every single one of them.

Q. You could be in error on every single one of them? All 15 of them?

A. All 15 of them.

Q. But even though a man is listed as having worked the seven to three shift, you still could be in error with respect to him too?

A. Of course, I could be.

Marshall had been an inmate of the Toronto Jail for nearly two months at that time. The above evidence points out one of the difficulties with reference to evidence given by inmates and it was necessary to watch the demeanour of all witnesses carefully. One of the advantages that inmates may have had over correctional officers in giving evidence is that a large number of them were accustomed to the courtroom atmosphere, having appeared and given evidence in court proceedings involving charges against themselves; whereas for many of the correctional officers this was the first time that they had been a witness. Allowances have been made for this.

With reference to Marshall's evidence in connection with the Sleigh storage-room incident, Mr. Carter asked how a bruise could turn blue in a minute and a half and Marshall maintained that this could happen. It may well be that the evidence as to the extent of the injury and the appearance of the inmate was exaggerated by Marshall.

Mr. Carter also questioned the likelihood of Sleigh using an area so close to the rotunda "where lawyers, social workers, police officers, and the like are". Marshall was of the opinion that because of the thickness of the walls in that area the shouting could not be heard in the rotunda area.

William Yurick was recalled with reference to Marshall's allegation that Marshall counted aloud as the correctional officers arrived and that he counted to a total of 15. Yurick, referring to Marshall, stated: "... and he was excitable at this time and he was counting. Whether he counted to the number of 15 I cannot tell at this moment, but I will say that he did count. Whether it reached that number or not I wouldn't know at this time."

Yurick indicated that the counting was not individual but rather in groups of two or three at a time: "... he would holler, 'Here's another two or three coming.'"

EVIDENCE OF ADELIO VITTI

There was reluctance on the part of this inmate to give evidence. It was, therefore, decided as a matter of procedure to hear his evidence *in camera* to ascertain its value. His evidence was so taken on December 20, 1974, and he was required to re-attend in order to give his evidence at the open hearing on January 7, 1975.

Since Vitti gave evidence at the open hearing where he was examined and cross-examined, it is to this evidence alone that reference will be made. I add that, at the *in camera* hearing, counsel for all interested parties were present, but only Commission counsel wished to examine.

On May 23, 1974, this inmate was convicted of break and enter and theft, and possession of stolen goods over \$200 and sentenced to two terms of six months consecutive. The following day he was convicted and sentenced for the illegal possession of narcotics and received a sentence of two months concurrent. He was in custody at the Toronto Jail on May 25 and was confined to Corridor 1.

Vitti's criminal record went back to 1971 and included offences of possession "under", attempted theft "under", taking an automobile without consent, and theft "under".

Vitti was 21 at the time of giving evidence. His evidence was that he had seen several officers coming into the rotunda from the staff lounge. At that time he was at the east side of the rotunda, near the entrance to Corridors 7 and 8. He stated that he proceeded through the rotunda and that from the west side, at the entrance leading to Corridors 1 and 2, he saw Frost "just being forced out to the dome and several guys were pushing . . . and he was on the ground and he was yelling . . . the next thing I saw he was being carried across the dome . . . I would say it was about six or seven guards."

Vitti did not see the correctional officers or Frost do anything at that time. He stated that he did not see Frost being struck or punched but that "he was kicked. I don't know who kicked him. . . . I seen feet moving towards his body. I didn't see who it was."

On the calling of a recess, Vitti was shown a transcript of the evidence he gave at the *in camera* hearing, and on resumption after the recess he stated that he "observed Frost being dragged out by a number of guards, dragged out to the dome . . . they were punching, kicking and holding him". At that time, he stated, Frost was "on the ground at the foot of No. 1 and 2 corridor out by the dome". This was clarified to indicate that Frost had not yet reached "the actual dome area".

He stated that about seven or eight correctional officers were there and that Frost was "trying to protect himself". He further said that he had "seen several that had kicked him [Frost]". He was unable to identify any particular correctional officer. He stated that the kicks, "from what I seen, they were landing on his stomach and the side of his stomach". He indicated the lower rib area. As to the degree of force, he stated, "If it was done to me it would have hurt." As for the duration, he said that it lasted no more than two minutes.

Vitti was then locked up in Corridor 1 and at that time he saw McPherson being taken to the rotunda, walking, and being escorted by "three, four, or five guards". Although he saw McPherson's nose, he did not see anything unusual about the nose or the area of the face.

As for Frost, Vitti stated that the correctional officers "didn't start kicking and punching him until they got him outside the dome and he was on the ground". It "took place in the dome area right out front of the grille . . . at the entrance of the grille". This reference was to the doorway between the rotunda area and the landing outside Corridors 1 and 2, and Vitti indicated that this was the only place where he saw any kicking or punching. On further questioning he indicated that this occurred on the rotunda side of the grille and that he did not see any kicking or punching while in the passageway outside Corridors 1 and 2.

Vitti described Furman's participation as nothing more than holding Frost. As for his identification of Dassy, he stated at the open inquiry that Dassy was one of those "involved in the kicking and punching".

Vitti's evidence with reference to Dassy in the open hearing was different from his evidence in the *in camera* hearing. Of course, even careful witnesses may relate things differently when giving evidence on different occasions, but when there are discrepancies of this kind one cannot help but be suspicious, particularly when there is an error in identification.

As for Vitti's contacts with Dassy before May 25, he stated that Dassy never bothered him, although when he (Vitti) was working in the kitchen "I was asked if I would bring him a meal the odd time".

Vitti was questioned by Mr. Salem, Dassy's counsel, and said he was sure that Dassy was present at the Frost incident. He said he remembered Furman as being the officer who opened the grille to let him back into his corridor (Corridor 1) and that Furman was on duty in Corridors 1 and 2 that day.

According to the attendance register, Furman had been assigned to Corridor 3, which is on the second floor of the old building immediately above Corridors 1 and 2.

Vitti was cross-examined by Mr. Carter about a conversation he had at the Mimico Reformatory with C.O. 4 William Aird. Vitti said that he told Aird "that I seen Frost get beat". He denied telling Aird that "Frost got what he deserved and he grabbed the guard by the throat and another inmate, McPherson, came to his assistance".

Vitti admitted that, following this conversation, Aird suggested that he should attend at the Commission and tell what he knew: "I told him [Aird] that I would think about it and he went ahead and one day he took me out to

see two Royal Commission officers [investigators] and I told him on that day that I didn't want nothing to do with it and he proceeded to take me out."

This is another example of the reluctance of some inmates to become involved. Vitti denied telling Aird that he did not want to appear because he did not want other inmates to know that he was helping the correctional officers.

EVIDENCE OF WILLIAM AIRD

Aird was called to give evidence in the presence of Vitti. He stated that he had worked for two years at the Mimico Reformatory and prior to that approximately five years at the Toronto Jail. He had first come to know Vitti when he (Aird) was working on the kitchen staff at the Toronto Jail. This was prior to Aird's transfer to Mimico in January 1973 and shortly after Vitti's sentencing in November 1972.

He said that Vitti had been in the kitchen with him for two or three months and that "restrictions are somewhat relaxed in the kitchen area" so that they were "on a fairly friendly basis".

As to the conversation that took place in the Mimico Reformatory, Aird said that Vitti told him that "Frost deserved what he got that day because he had seen Frost grab the officer by the throat and McPherson came to Frost's assistance".

Vitti was given the opportunity to cross-examine Aird, and did so. Vitti denied that he had "said any such thing" to Aird.

The Commissioner asked Aird whether it was possible that Vitti was trying to get some favour "by telling you something beyond what he had personal knowledge of".

A. It's possible, sir. Christmas was coming and inmates were applying for Christmas passes. . . . I don't know for sure.

THE COMMISSIONER. No, I quite appreciate that, because certainly the evidence given today would indicate that he wouldn't have personal knowledge of what Frost had done and if Frost deserved what happened or not. Mr. Vitti might have some opinions on that from other than personal observations.

A. Yes.

On cross-examination by Mr. Salem, Aird stated: "I asked Vitti if he was prepared to go down to the Royal Commission and give this evidence or speak to someone from the Royal Commission, because I told him I am sure that they would be quite interested in this; and he was quite agreeable to this, he says, but I don't want my name in the newspapers. So I told him that I thought he would be given some protection, but I would find out about it, and he said, 'Well, go ahead and find out'; and I went to the Assistant Superintendent, Mr. Burns, and told him the story and Mr. Burns

said that he would take it from there."

At the hearing, Aird was commended for his assistance to the Commission:

THE COMMISSIONER. Mr. Aird, aside from the value of this evidence given by Mr. Vitti and yourself today, and I would have to make my mind up about that after I hear all the evidence in this inquiry, I did wish at this time, however, to commend you for having attempted to bring evidence before the Commission that you thought might be of use in view of what you say Mr. Vitti told you. And there is no doubt that Mr. Vitti acknowledges having a conversation with you. I hope that others who might have something to add will also be encouraged to come forth as you attempted to assist the Commission by the evidence of Mr. Vitti.

In placing the evidence of Aird and Vitti in the perspective of all the evidence given on the Frost incident, I am satisfied that Aird did relate accurately his conversation with Vitti and particularly Vitti's recounting of what he saw. I am not convinced, however, that what Vitti told Aird was an accurate recall of his own observations. The evidence was not given under oath, and I prefer to take Vitti's evidence under oath during examination and cross-examination by counsel as the total of what he actually saw. I further conclude that the first time Vitti saw anything of the Frost incident was as Frost was being led into the rotunda on his way to the reception cell and that comments made to Aird as to prior events were in part a result of rumour he had picked up at the Toronto Jail, perhaps added to by his own opinion and conclusions.

I find Vitti's evidence of no assistance with reference to the rotunda occurrence or to events prior to Frost being led into the rotunda. Certainly the identification of Dassy was erroneous. As for the "kicking", since it could not be attributed to any particular correctional officer it is of little value. Undoubtedly there was scuffling and in view of the other errors in Vitti's evidence it may have been more to move Frost along than to inflict injury deliberately. On the whole, Vitti's evidence was not of great assistance.

EVIDENCE OF JAMES JOSEPH MARTIN SIMPSON

Simpson was the last inmate witness in connection with the Frost incident. He was 19 at the time of giving evidence. His criminal record was in connection with car theft, wilful damage, possession of stolen property under \$200, and possession of a weapon for purposes dangerous to the peace.

Simpson said that he had a sprained ankle at the time and was lodged in 1 hospital dormitory. Although a youthful inmate, he gave his evidence in quite a satisfactory manner. He stated that he "heard a scuffle outside the

dormitory. I got up to take a look to see what it was and I seen an unknown number of guards, maybe eight, 10 guards and they had another inmate in a corner and they were throwing punches at him."

He identified the inmate as Frost. His point of observation was the same as that of Marshall and Yurick, that is, from inside the grille of 1 hospital dormitory. He first saw Frost in the area about opposite the top of the "down stairway" outside Corridor 2. He said that he saw the guards "throwing punches towards him [Frost]" and that there were "just a couple [who] were actually throwing the punches, the others were just milling around". From a logical point of view, this appears more acceptable than evidence that the correctional officers were assaulting Frost.

He stated that he could not identify the correctional officers doing the punching, nor could he identify any of the other correctional officers present.

Simpson stated that Frost "was on his feet and he was struggling, like I guess he was trying to get away. He was hollering something to the effect 'let me go' or something like that."

He stated that he also observed "a guy named McPherson come running out of the corridor that the guards had left the door open. He came out and went behind the guards. . . . I couldn't see him when he went behind the guards, but a couple of seconds later he went into the corner pretty fast. I don't know if he was pushed or if he went by himself."

He stated he did not see any correctional officers do anything to McPherson, or McPherson do anything to a correctional officer.

He then stated that he saw the correctional officers and Frost move out to the centre of the corridor, "the guard leading Frost into the rotunda by the hair. He had him by the hair." Frost then went out of his sight. Nor did he see anything further with reference to McPherson. He did, however, hear "one guard who was getting a blast from another for pushing a panic button or whatever it is called".

Evidence had been given that Furman was the one who sounded the alarm button and this would appear to have been an over-reaction to the situation, for at that time there were certainly enough correctional officers present to control the situation. The alarm button can be heard throughout the jail and can, when sounded unnecessarily, cause a tense reaction among correctional officers and inmates. In addition it can, unjustifiably, draw other correctional officers away from their normal posts. If an incident was purposely designed as a diversion, this could cause a security problem.

Simpson felt that the guard who was being "blasted" must have been "just new around there". This may well be a reflection on training. Certainly, correctional officers should be able to judge the gravity of a situation and not over-react to it.

Simpson stated that "about half an hour later" in the area of the landing outside Corridors 1 and 2 he heard a "coloured guard . . . sort of bragging about how he had punched somebody and he was going through the motions with his fists. . . ."

Simpson stated that he was unable to say to whom the guard was referring, and he did not know whether he was talking about Frost. In answer to an inquiry as to whether the guard was black, Pakistani, or Indian, Simpson

indicated that "it was a black guard". He was, however, unable to identify the correctional officer from the book of photographs. He stated that a couple of days later Frost was brought into the dormitory and "his face was pretty badly beaten. He had a couple of black eyes and his face was swollen up. He was mostly mumbling all the time. He was pretty heavily sedated all the time."

Simpson was unable to state whether there were any "white shirts" present when he saw the guards "coming from elsewhere". He also said that he was unable to see Frost's face when he was being led into the rotunda. He stated that Frost was "bent down like, hunched over and this guard had him by the hair, leading him".

On cross-examination, Mr. Carter attempted to show that inmates looking out of the grille of the hospital dormitory would have their vision restricted by the relatively small grille area, as well as by any officers or other inmates who might have been standing outside the grille or in the landing area.

The evidence of each of the inmate witnesses in the area has been separately considered. I was favourably impressed with the evidence of Yurick and Simpson. I believe that, subject to the imperfections that one might find with any witness in giving evidence, their recounting of events was substantially correct.

EVIDENCE OF CAROL ELDRIDGE

Counsel for the Commission called Carol Eldridge, a social worker at the Toronto Jail, in view of a report in the *Toronto Star* attributing this remark to James Frost: "The jail social worker saw it all [the alleged assault]." Miss Eldridge advised that she had not seen this event and, indeed, was not working in the Toronto Jail on that particular date.

Before considering the evidence of the remaining correctional officers, I think it would be advisable to go to the evidence of Gary Dassy, who initiated the allegations involving Frost.

EVIDENCE OF GARY DASSY

Dassy stated that his first contact with Frost was on Sunday, May 26, at 2:45 p.m., when he was working on the 3B landing of the new jail — the segregation cells on the third floor of the new building. He stated that his normal position was at the sallyport, which is the entrance to the segregation area.

Dassy stated that lists of inmates who have been assigned to the cor-

ridors and segregation areas are kept outside each corridor. When assigned to the 3B landing, Dassy said, he would have the keys for the full floor, including the 3A and 3C north and south corridors. The correctional officers stationed in 3A and 3C would not have the keys to their doors on them, for security reasons. The doors to 3A and 3C are kept locked at all times. Dassy stated that during the day shift there would be two men on 3B, on Saturday and Sunday, and at night there would be only one correctional officer. With one correctional officer on duty in 3A and one on duty in 3C, this would mean a total of four on the third floor from 8:00 a.m. to 5:00 p.m., Monday through Friday.

On Sunday, May 26, when he came on duty, Dassy said, he let the officers into 3A and 3C and then went into 3B segregation area and began checking the inmates in the cells. He believed there were three in segregation at the time and Frost was in No. 4. He stated: "I seen a person or what resembled a person in a . . . complete mess. He was covered in blood. Bruised. If anybody had ever seen the movie *Exorcist* you would get an idea what this kid looked like. . . . His face was bloody. Swollen. He was dressed in baby dolls so I couldn't see if there was any marks other than on his face, and there was like scratches. . . . His eyes were swollen, puffed. . . . I couldn't describe the scratches. They looked like scrapings of hands being run down the side of his face. His eyes were just about permanently closed. His mouth was swollen. Generally he was a mess."

As in other parts of Dassy's evidence, there was a certain dramatization.

Dassy related that Frost asked for a cigarette, to which he replied: "You will have to wait a minute. I have got to check the rest of the inmates in the segregation cells." Dassy stated that what he really wanted to do was check the charge sheet "to see how he got this way and what he was in for".

Dassy said that his purpose in checking the charge sheet was to see whether Frost was "dangerous". He stated that a notation such as "no spoon" would indicate a dangerous inmate who might break the spoon "and use it as a weapon on himself or on me". He mentioned that on Frost's sheet there was the notation: "Extremely violent, epileptic, speed freak, no spoon."

"Speed freak", Dassy stated, meant "a person who has amphetamine, and when they are on amphetamine have abnormal strength . . . if by myself [I] let him out, he could attack me and probably overpower me with his abnormal power from the amphetamine."

Dassy stated that he then marked the 3B log to the effect that he had relieved the previous correctional officer, when "all of a sudden Frost started to scream. I went back and took a look inside. . . . I went back and asked him what was the matter and as I asked him he was punching himself, banging his head on the bed and scratching his face with his hands . . . he looked like he was doing it pretty hard . . . he was kneeling on the floor, putting his head on the steel bed, and bringing his head up and banging it down forehead first, and by the look of it from where I was the bridge of his nose [was] hitting the bed."

Dassy said he thought Frost could have been having an epileptic fit. He then said that Frost "got up on the bed and was in the corner of the cell on

the bed . . . sort of cringing in the corner of the cell". He stated that Frost was breathing in short gasps "like he could not catch his breath and was choking on something in his mouth or on his tongue".

As a result of this, Dassy went to the telephone (at the sallyport) and phoned the surgery. He spoke to nurse Robert McLean, and was told to "take him out of the cell"; and "I said I would not because of the nature of the charges on the report and I would have to get hold of the Chief's office and they would have to send somebody else over there while I took him out, because I had keys to the whole of that floor. . . ."

Dassy indicated that this was normal routine for security reasons, since he had the keys for the whole floor, he could not go in alone. Dassy stated that he then phoned the Chief's office and contacted C.O. 5 Vassos Zodiates. Zodiates then attended with C.O. 3 J. B. Brown and C.O. 2 William Stafford.

Dassy opened the door. Frost was "underneath the bed in the fetus position". He said that the door he opened was the second door as he had not locked the first door, which was "usually always kept open". He stated that Zodiates then called Frost out from under the bed into the exercise area. Brown put a blanket under Frost's head and "at about that time Bobby McLean and a male nurse . . . Pierre [Cabon] . . . arrived".

Dassy added that questions were asked of Frost at the time "and I think the answer, I believe the answer was, I have been beaten, I have been beaten; I want to see my lawyer; I want to see a doctor; and he repeated this quite often."

The two nurses (Cabon and McLean) looked at Frost "and then one put the instep of his foot very lightly on Frost's backside and nudged him or I guess the better word would be kicked him two or three times and they said that Frost was not having an epileptic seizure, that he was in hysteria, and this is a normal procedure to bring a person out of hysteria, to either kick [him] or slap his face."

On further questioning, Dassy stated that the kick was not in the manner of one kicking a football but was by way of jostling or nudging. He said that it was not a hostile act, but was a type of medical test. The use by Dassy of the phrase "the better word would be kicked him two or three times" is another example of Dassy's dramatization.

Edna Kendrew, a registered nurse, then arrived and gave Frost some medication. "He was told if he did not take it he would be given a needle so he took his pill."

Dassy said that he suggested that Frost be put into "what we call the bridal suite which is the fifth segregation cell". This cell contains no bed. He said Zodiates agreed with this suggestion. When Frost was put into the cell, "all he would say was, 'I've been beaten, I have been beaten, I want to see my lawyer, I want to see my doctor.'" Although Dassy said he understood this, he also stated that Frost was "incoherent".

Dassy stated that he put two blankets of special fireproof and rip-proof material into the cell. Also, he claimed he broke up the chicken dinner because Frost said his mouth was too sore to eat. Frost "did not want any of that either, but he did want a cup of tea, so I held a cup of tea to his mouth and he took a few sips of this and that's all he could manage."

Dassy stated that he "took special precautions to check him more often than the regular 20 minutes . . . and so did Lieutenant Zodiates as he came around quite frequently to look in on Frost."

Dassy said that Frost went to sleep soon after the tea and that there was nothing unusual after that insofar as Frost was concerned. He claimed he had received a phone call from Stafford during the evening of that same day (Sunday). He said that he was still in 3B and that Stafford had said "words to the effect that it's a good thing that Frost did what he did because he had beaten Frost the previous day".

Dassy said: "I couldn't recall the exact words, but the gist of the conversation went something like, yes, we beat Frost the other day, and what he did today, there's - we can cover it up through this, so, you know, if there's an investigation, ah, it will show that it looked like he had put the wounds on himself, or the wounds were self-inflicted, and then the conversation carried on about where we were going to have a beer that night."

Dassy said that they would have a few beers at the Legion "maybe once a week. Sometimes twice a week . . . we never socialized except at the Legion when we would go and have a few beers. Other than that we had nothing else in common." This was with reference to whether Stafford was a friend of his (see Stafford's denial, below).

Dassy said that this "having a few beers" started a week after he commenced employment at the Toronto Jail and continued until he was fired. He acknowledged that the date of his dismissal was about August 30, 1974.

Concerning the alleged telephone conversation between Stafford and Dassy, the evidence was as follows:

THE COMMISSIONER. Was any explanation given to you why Stafford would call you about the matter?

A. Because it is general knowledge around the jail that anything that goes on like this, and an investigation is called for, everybody comes together to cover it up. . . . The favourite phrase for the inspectors at Queen's Park, the guards use the word gestapo, and they have no liking whatsoever for these inspectors at Queen's Park. . . .

Q. Did he just get into the subject matter immediately or was there any other discussion?

A. There was a few words but I did not know that he was involved in it because he told me over the phone he was the one responsible for the condition of Frost. This is standard procedure to cover this up.

Q. Well, at any rate what you are saying is that that was the reason that Mr. Stafford called you?

A. Yes, sir. I do not think he would have called me if there was not going to be an investigation, but you know, the word was that Dr. Dickinson had witnessed this and that he was going to ask for an investigation, so therefore everybody worked together to hide the real facts of the case to Inspector Villeneuve.

Q. Yes, but this was before you knew Inspector Villeneuve was going to come to obtain a statement from you.

A. I knew that at some date that some inspector from Queen's Park would be

coming to me for a statement. I did not know which inspector it was but it happened to be Inspector Villeneuve.

Q. But before you happened to be notified that there would be somebody coming to take a statement.

A. I knew there was to be an investigation.

Q. You anticipated.

A. Oh yes, sir.

Q. But no one had informed you of that fact.

A. No, sir. Oh, yes, Gus Durball had informed me that there was going to be one hell of an investigation.

Q. But that was after you received the telephone call from Mr. Stafford.

A. Yes, sir.

Q. So that up to the time you received Stafford's telephone call there was no indication to you at that time there was going to be an investigation?

A. No, sir.

With reference to the alleged telephone call by Stafford to Dassy, Dassy said that he told Stafford: "Well, you damn near killed him", and Stafford replied: "Frost had attacked me." Dassy stated that Stafford further said "he put the boots" to Frost and that Dr. Dickinson had seen it and was going to call for an investigation.

Dassy said that he went off duty at 10:45 p.m. and that he didn't meet Stafford for a beer that evening.

The next day, Dassy related, Paul Mulhern, one of the Deputy Superintendents, called him into the office and said: "You had trouble on 3B last night, Mr. Dassy." Dassy said he told Mr. Mulhern that Frost had injured himself and that Mr. Mulhern had then said: "That is exactly what I wanted to hear." Dassy said that he found it very unusual that a senior officer would say something like that. He stated that Mr. Mulhern asked him for a report but he never gave him one. Dassy interpreted Mr. Mulhern's words to indicate that he (Mulhern) was a party to the cover-up, although he did admit on questioning that it could also have indicated that Mr. Mulhern was satisfied that there would be a report by Dassy.

Although admitting this other interpretation, Dassy continued: "To me [this] meant that this is what I want to hear because there was going to be an investigation and this was going to be used in part of a cover-up to show that Frost had in fact put these marks on himself. This is how I took it, sir, I do not know if he meant it another way but this is how I interpreted it. He asked me if I would make a statement to the effect of what happened on Sunday night with Frost. . . . I said I would and never did."

Dassy said that Mr. Mulhern did not ask for anything to be put in the report that was false.

Dassy stated that on Tuesday he had a conversation with Durball in the tearoom and that Durball told him: "'I took part in the beating of James Frost and, Gary, there is going to be a hell of an investigation'. Mr. Durball then went on to say that Frost had mouthed off to Stafford and attacked Stafford."

Dassy said: "Durball raised his hand in indication that Frost had thrown

or tried to throw a punch at Stafford." He said that Durball did not indicate what part he had taken in the alleged beating of Frost "except that he had helped beat Frost". Dassy stated that there were two or three other conversations with Durball about Frost "over a period of a week . . . they were all to do with covering up the beating of James Frost . . . while . . . Durball and Stafford were beating Frost an inmate came running up the corridor with a blanket and that Mr. Welsh, a guard, dropped him. These were the words . . . by Durball."

Dassy stated that approximately 10 days after the Frost incident he received a telephone call at home from Mr. Villeneuve and that he was asked if he would give a statement about what happened to Frost. Dassy said that he would, at the jail.

He then said that he obtained Stafford's telephone number and told Stafford about Mr. Villeneuve's phone call and that "Stafford said we have nothing to worry about; you go ahead and give your statement".

Dassy saw Mr. Villeneuve the next day and the inspector advised that he had been assigned to do an investigation on Frost. He asked Dassy to relate what happened on Sunday and Dassy did. Dassy stated that he did not tell Mr. Villeneuve about the conversation with Stafford or about the conversation with Durball.

If Dassy believed the statements of Stafford and Durball to be correct, then, in effect, Dassy was also guilty of the same type of cover-up that he complained of at the inquiry. Dassy said C.O. 5 John Moquin had told him: "I have to give a statement too to Mr. Villeneuve because I was one of the officers that took Frost to the hole."

Dassy stated that Mr. Villeneuve advised that he "had a medical report and a doctor's report showing that the only way James Frost could have received those blows was from direct punches or kicks to the face and other parts of the body".

Dassy said that he knew nothing of the medical report and all he had seen Frost doing was punching and beating himself and he told Mr. Villeneuve that that was all he knew. This, of course, is not wholly true in that he did not mention to Mr. Villeneuve his alleged conversations with Stafford and Durball, both of which would be important in connection with any investigation.

Dassy went on to say that Mr. Villeneuve had stated: "Now I want the truth", to which Dassy replied: "I am telling you the truth as I seen it that night. Anything else I know nothing about."

Dassy added: "There was a veiled attempt to threaten me by Mr. Villeneuve, to the fact that I was still a probationary officer . . . when that didn't work he then proceeded to talk to me about the conditions of the Don Jail and my opinion of the Don Jail."

Dassy interpreted the "veiled threat" as an attempt to try to have him tell more than he had already told; Dassy admitted, at the inquiry, that it was not correct that he knew nothing more about the matter. Dassy acknowledged that the "veiled threat" was designed to draw further information from him and was not an attempt to cover anything up.

Dassy related that he next saw Frost about two months later in the 1A

hospital dormitory and Frost was telling him "how he can't stand being confined in a closed area". Dassy interpreted this as meaning that Frost suffered from claustrophobia.

Finally, Dassy related that he had "asked Mr. Zodiates what was being done with the investigation in regard to James Frost and Mr. Zodiates told me that the investigation had to be dropped because James Frost escaped custody".

Dassy went on to say: "Any time a person escaped custody after an investigation has been launched into a complaint by that person, that is automatically dropped by Queen's Park."

This statement was inquired into during the Royal Commission hearings and was found to be without substance. There was no such rule. The investigation was not dropped because of any escape from custody. The investigation was continued to its apparent normal completion and the decision was that there was insufficient evidence. This has already been commented upon.

Dassy had indicated that he had obtained his information about the discontinuance of investigations on escape from custody from probation officers and other correctional officers.

EVIDENCE OF WILLIAM STAFFORD

With reference to the Frost incident, the three correctional officers who admitted to being there at the time were C.O. 2 Stafford, C.O. 2 Augustus Durball, and C.O. 1 Nello Welsh.

Stafford was 46 at the time of this occurrence. He was born in Scotland. He was "possibly six feet in height" with a weight of 210. Stafford said that his glove size was "just the largest you can get".

Stafford commenced employment as a correctional officer at the Toronto Jail in 1970. Prior to that he was a tool and die maker and assistant foreman at Douglas Aircraft.

Stafford stated that his duties in the morning on May 25, 1974, were in the exercise yard. He was receiving inmates from Corridor 2 to take them out to the exercise yard and while still in the vicinity of Corridor 2 he noticed blankets about three-quarters of the way down the corridor. He advised Welsh, who was in charge of Corridor 2 at the time, that the blankets should be removed prior to Nuttall's inspection. He stated that Welsh was a new officer and the regulations did not allow blankets on the floor in the day-room part of the corridor. Stafford thought the reason for this prohibition was that it was a "health hazard".

Stafford said that Welsh told Frost to take the blanket into his cell and that Frost replied that "it was the second time this morning he screwed him around and he was just about cheesed off a bit about it".

He stated that Frost refused Welsh's order and that he (Stafford) then

asked Durball to go into the corridor and assist Welsh. Stafford, who had the key to Corridor 2, then admitted Durball to the corridor, and: "Durball told Frost to remove the bedding, which he again refused." Stafford stated that on this refusal Durball ordered Frost to come out into the corridor, which Frost started to do. Stafford stated that he "heard a scuffle", turned, and "observed Frost was facing Mr. Durball . . . and he was making as if he was going to strike a blow . . . with his fist".

Stafford then said: "I grabbed Frost by the arm and I think by his hair, and I forced him . . . the back of his shirt and his hair. I may have got both of them when I grabbed hold of him. And I just turned him around and forced him on the ground. He was kicking around while he was on the ground." Stafford stated that this was "immediately outside of No. 2 Corridor". He stated: "Frost was putting up some resistance, you know, throwing his body about and kicking, throwing his arms around. . . . He was flailing around. It is difficult to say if he was trying to throw a punch at me, but generally he was just throwing his arms about."

Stafford said that Frost was trying to get up and the next thing that happened was that the buzzer went and about seven seconds after that Frost was taken by Moquin. Stafford was unable to say what Welsh was doing at the time, but stated that Durball "was assisting me with Mr. Frost . . . just restraining him . . . holding him . . . by both hands, his clothing and part of his legs". On further examination Stafford said that he was sitting "about his [Frost's] hips". Stafford stated that he was kneeling but not on Frost. He added that he was holding Frost "as firm as I could" that he still had "ahold of his hair, and he can't get his head up. I got ahold of his clothing. I got a grip on him where it was difficult for him to get up." Stafford said that he was using just sufficient force on Frost "to make sure he was in no position where he could do me any harm".

Stafford denied seeing any correctional officer punch or kick Frost, either while he was being held down or later when he was up.

Stafford thought Frost continued to be belligerent even after Moquin took hold of him. He could not say for sure, but thought that Moquin had put an arm lock on Frost. When Moquin inquired as to what was "going on" Stafford told him that Frost had attacked Durball. Stafford stated that he then went back to the exercise yard.

Prior to turning Frost over to Moquin, Stafford said, he picked Frost up. Frost was then on his feet "but still bent over". He said he did not see Frost again that day, but saw him the next day. Stafford stated that on May 25 when he turned Frost over to Moquin he observed nothing about Frost's face. "There were no marks on his face."

The following day, Stafford related, "we got a call from Mr. Dassy, that Frost was having a seizure or something. . . . I was ordered by Mr. Zodiates and Mr. Brown to accompany them along with two male nurses, McLean and Cabon, to 3B landing." Stafford stated that Frost was underneath the bed and "Mr. Brown entered the cell and got ahold of Frost by the legs and pulled him out". Stafford saw Frost's face. There was "puffiness and redness" in "the general area of his face, forehead and his eyes".

On May 26 at 3B landing, Stafford said, he heard Dassy tell Zodiates that

Frost had been "striking his face off the bunk".

The evidence of Wallace was put to Stafford. Stafford denied that evidence and stated that he did not punch Frost from the neck to the waist while Frost was down, that he did not slap Frost in the face, and that he did not smile and rub his hands together and comment that that was his exercise for the day; nor did he put his foot on the bar of 1 hospital dormitory and wipe what appeared to be blood from his boot.

With reference to Dassy's evidence as to the telephone conversation in which Stafford allegedly said he had taken part in "beating Frost" and that it was a good thing that Frost had inflicted injury on himself as this would cover up the assault on Frost, Stafford stated that he could not recall phoning Dassy at all, nor did he remember any such conversation with Dassy, and that had he said anything like that he would have remembered it. He was unable to give any reason why Dassy would invent the story and make such accusations against him. He said that at no time was there any animosity or hard feelings between Dassy and himself. Further, he could not recall going out and drinking with Dassy. He knew of no reason why Dassy would make "false allegations" against him.

Stafford stated that the correctional officer who sounded the buzzer was C.O. 2 Joseph Furman and the reason he did was "because there was a scuffle . . . in No. 2 Corridor". He stated that Furman had been in the landing between Corridors 3 and 4 and he could "look through the stairs and see where the scuffle had taken place". He thought that Furman might have sounded the alarm because there might have been inmates walking around and "you have got to get the situation under control as quickly as possible, to get people removed from the area". Although there were three correctional officers with Frost, Stafford stated: "Well, it wasn't a controlled situation because the man was still giving us difficulty to control."

When asked if he was angry when Frost attempted to punch Durball, Stafford stated: "Anger doesn't enter into it when you are dealing with inmates . . . if you get angry at every inmate you come across at Don Jail you are going to give yourself a hard job." He stated that his only reaction was to go to Durball's assistance: "There was no anger on my part."

After further questioning about the alleged telephone conversation with Dassy, the following exchange took place between the Commissioner and Stafford:

THE COMMISSIONER. Then I will come back to this other question: Did you at any time telephone Mr. Dassy and speak to him about the Frost incident?

A. No, sir.

Q. Well then, Mr. Dassy as you know alleges that that did occur.

A. Yes, sir.

Q. So I guess the only conclusion that I have to come to is either Mr. Dassy is lying or you are lying.

A. Yes, sir.

Q. There can't be any other explanation?

A. That's correct, sir.

Q. If there is, I would like to hear it.

A. So would I, sir.

Q. That is the only explanation?

A. Yes, sir.

Stafford denied any animosity or hard feelings between Dassy and himself, either at that time or at the time of our inquiry. As for drinking with Dassy, Stafford stated that Dassy could have been in the "general company" at the Legion "but he was not specifically in my company". He denied that Dassy was ever at his table.

Stafford in his evidence denied any wrongdoing on his part or on the part of any other correctional officer and indicated Frost was in breach of the regulations in having a blanket on the floor, and when Frost attempted to punch Durball when ordered out of the corridor no more force was used on Frost than was necessary in order to restrain him.

If one accepts the evidence of Yurick and Wallace, both of whom seemed to be giving credible evidence, then one has to conclude that Stafford is incorrect in stating that there were no punches or kicks at Frost.

The more difficult and more direct confrontation is between the evidence of Dassy and Stafford with reference to the phone call. Although Stafford, from other evidence given at the hearing, appeared to be a chatty type of person who might well relate what Dassy stated he did, is it likely that Stafford would use the internal telephone system at the Toronto Jail for this purpose? Dassy was very positive about his evidence in this regard, whereas Stafford said he could not recall the phone call and would have recalled the conversation had it occurred. Certainly the conversation is consistent with the events that took place, and, although Dassy did tend to dramatize and exaggerate on occasion, in giving evidence his recall was much better than average. I am of the opinion that the alleged conversation between Stafford and Dassy did take place even though it may not have been on the telephone.

An example of Stafford's chattiness was with reference to the evidence given by inmate Sutherland in connection with another incident, which Stafford appeared to corroborate.

On examination by Mrs. Peters, Stafford said that, with reference to the punch Frost took at Durball, he did not know whether it landed or not.

Stafford was questioned further by Mrs. Peters about his drinking at the Legion and his friendship with other correctional officers. Among his answers were: "I am still not an enemy of Mr. Dassy. I am a friend of most of the people I work with . . . I mean I am friends, because I come in contact with my work mates, to have friendship with the people you work with."

My assessment of Stafford would indicate that he is a friendly type of man, and I think it is quite understandable that he would maintain friendship with his co-workers. This is somewhat in contrast with Nuttall, who indicated in his evidence that after he finished work he left the Toronto Jail and did not have social contact with other jail staff. Nuttall is a different type of person. He appeared to me to be a most efficient and businesslike professional correctional officer. Stafford, on the other hand, was perhaps more of the old-line correctional officer who was not averse to passing the time of day with some inmates and to being friendly with all staff members. It is, again, for

this reason that it is not improbable that he would have spoken to Dassy about the Frost incident in the manner related by Dassy.

With reference to Dassy's alleged telephone conversation with Stafford, Dassy stated that Stafford had said that Dr. Dickinson had seen the incident and was going to call for an investigation. It was brought out by Mr. Carter, on the examination of Stafford, that Dr. Dickinson was not on duty on May 25 or May 26. If Stafford mentioned Dr. Dickinson, then he was in error. It may be that the reference should have been to Dr. Dubelsten who, although he did not see the incident, did examine Frost. Therefore either Stafford or Dassy was incorrect in mentioning Dr. Dickinson instead of Dr. Dubelsten. But this is the kind of thing of which rumours are made.

In fact, Dr. Dubelsten did not call for any investigation.

EVIDENCE OF DR. PETER ALEXANDER DUBELSTEN

Dr. Dubelsten is the Chief Medical Officer at the Toronto Jail. At all times when he gave evidence I found him – and also other medical doctors who testified – to be straightforward and careful.

Dr. Dubelsten graduated in 1961 and was in general practice for 10 years. He joined the Ministry of Correctional Services in 1971.

Dr. Dubelsten examined Frost on Monday, May 27, at his office at the Toronto Jail. He found marked swelling with bruises about the eyes and "bleeding under the white part of the eye due to a ruptured blood vessel . . . on both sides". He said Frost was "very tender" over both cheek bones and his lips were swollen "due to ruptured blood vessels and the accumulation of blood in the tissue". He said there were superficial skin abrasions and bruises of the high and low back. Frost had a small bruise over the pelvis on the right side and he told Dr. Dubelsten that his injuries were "inflicted by correctional officers one or two days ago".

Because of the tenderness of the cheekbones, Frost was referred to the Wellesley Hospital for X-rays of the skull and facial bones. This referral would have been made whether or not Frost had complained of injury inflicted by correctional officers.

An X-ray was also requested of the lower back because of the bruising there and the complaint of pain.

The X-rays were negative, but nevertheless Dr. Dubelsten transferred Frost to the hospital dormitory as an extra precaution and because of the facial injury. Frost was on head injury routine, which meant that a nurse would check his blood pressure, pulse, pupils, and respiration every hour.

Dr. Dubelsten was of the opinion that the injury to the face was not the result of an epileptic seizure. The injury to the eye would have been caused by a direct blow, but this could have been self-inflicted. Dr. Dubelsten added that he did not recall ever seeing a person who sustained a blow as a result of

fists or a boot not having a laceration to the face as well. He stated that Frost did not have any lacerations. He said it would be impossible to decide whether the eye injury was the result of a person punching himself in the eye or some third party doing the punching.

Dr. Dubelsten stated: "I see about 150 facial injuries a year at the Toronto Jail; the majority of the cases we have [are from] fights between . . . inmates and I don't recall seeing a single case without a laceration."

The doctor said that the injury to the lower spine could not be self-administered and would either be the result of a seizure or of someone else administering such injury, although he did state that a person lying under the bed and bouncing up and down on his stomach might produce the bruise that he saw.

On examination by Mr. Carter, Dr. Dubelsten said that he saw no evidence of dried blood. This was directed to the matter of blood on the floor in the reception cell and other blood supposedly on the boot of Stafford. The latter could have been from McPherson's nosebleed.

Dr. Dubelsten also stated that he found no bruises or marks in the area of the stomach below the rib cage, although he did indicate that even a force which would cause a person to lose his breath would not necessarily leave bruising or marks. He stated that he would expect to find bruises if someone had received a series of punches and kicks in the stomach area, but the majority of Frost's injuries were on his face. He added that if Frost had covered his face with his hands he would have thought there would have been injuries on the hands, and he found none. The doctor said he did not observe any marks on the upper or lower extremities where he would have expected to find bruising two days later if there had been a series of kicks — at least the probabilities would be quite high. There was no complaint by Frost of blood in the urine to indicate internal injury and, in fact, there was no indication of internal injury at all.

Dr. Dubelsten indicated that the amount of force would be a determining factor and if someone came running, without breaking stride, and kicked Frost in the head as had been alleged by one of the inmate witnesses, one would expect to find bruising and fractured bones, of which there were none. Dr. Dubelsten indicated that if this occurred, as related by Marshall, he would be "quite surprised" that Frost was still alive, and he stated further that the injuries he observed could be consistent with Frost "banging his head on the wall and hitting the bridge of his nose on the bed" as related by Dassy.

Dr. Dubelsten was recalled with reference to the conversation alleged to have taken place between Stafford and Dassy, on the possibility that it was he, and not Dr. Dickinson, who had been mentioned as having seen the alleged assault by Stafford on Frost.

He was on duty on May 25, but denied seeing any correctional officer having physical contact with Frost, or seeing Frost on either May 25 or May 26, either in or out of his office.

Despite the evidence of the two doctors, I do not think that this completely destroys Dassy's testimony concerning the conversation. It may be that Dr. Dickinson's name was mentioned instead of Dr. Dubelsten's; or it is possible

that Dr. Dubelsten's name was mentioned, and erroneously recalled as Dr. Dickinson's.

Dr. Dubelsten was on duty, and, even if he did not witness the altercation with Frost and the correctional officers, it may be that Stafford thought he did, or Stafford may have thought that one of the doctors would call for an investigation. One knows how rumours spread, and that they may have some or little truth mixed in with fancy or conjecture.

Dr. Dubelsten was questioned about his daily journal. It is noted that an item dated May 25 indicated that Durball had injured his right wrist with a small abrasion over the fourth knuckle and that this was possibly a human bite. If a human bite was ruled out, this could indicate that the abrasion was caused by an attempt by Durball to strike at Frost with his fist and striking instead the grille at the entrance to Corridor 2.

Dr. Dubelsten confirmed that he was the only medical officer on duty on Saturday, May 25.

With reference to the May 25 entry of "possible human bite", in answer to Mr. Salem, Dr. Dubelsten said this was Durball's advice to him, but the "wound" could have been caused by striking something rather than being bitten, and "it is impossible to tell them apart". He stated he did not observe any teeth marks "and this injury did not require any extensive treatment. I did not even prescribe dressing."

EVIDENCE OF DR. OSLER BRIGGS DICKINSON

Dr. Dickinson was another of the Toronto Jail staff doctors. With reference to the conversation Dassy said he had with Stafford to the effect that Dr. Dickinson had seen Stafford "put the boots to Frost" and was going to call for an investigation, the staff doctors' book showed that Dr. Dickinson was on duty May 24 and May 27. Dr. Dickinson said it was very unlikely that he was in the jail on Saturday, May 25. He always made a point of signing in and out. He did not recall seeing an altercation between correctional officers and an inmate. He admitted that if it did occur, and if perchance he was in the jail at the time, it did not impress itself upon him sufficiently for him to recall it.

EVIDENCE OF PIERRE CABON

Male nurse Cabon had been a registered nurse for some 20 years. He was first employed at the Toronto Jail in January 1973.

He had received a phone call from Dassy that Frost was having a seizure.

He informed Dassy that they should remove Frost from his cell, turn him on his side and loosen his clothing. He then attended with male nurse McLean and took a Phillips' airways instrument and proceeded to 3B segregation.

On arriving, they found the cell door still locked. Dassy did not have the key. Cabon told Dassy to inform the Chief, and when officers arrived the door to the cell was opened and he saw Frost "banging his head against the wall". Frost was under the bed at the time. One of the correctional officers took Frost from under the bed and Cabon observed "puffiness around the eyes. There were no bruises or bleeding insofar as I am concerned."

He stated that Frost was hysterical, repeating: "I didn't do it - I didn't do it." Cabon knew that Frost was not having a seizure and he administered some sedative orally. He then left to go about his other duties after advising that there was nothing seriously wrong with Frost and that he would check him later.

Cabon said that he later saw Frost and Frost was shivering, so he instructed Dassy to get some blankets. From other evidence it appears that Frost was then in No. 5 cell, the cell without a bed.

Certainly when an inmate is placed in No. 5 cell without a bed and no place to sit or lie other than the tile floor, a non-tearable mattress and non-tearable blankets should be provided automatically, without instructions from the medical or nursing staff.

Cabon said that he saw Frost again "the next Monday morning in 1 dorm which they call the hospital dorm". Frost's face was "very bruised . . . under his eyes". Cabon said that there was also bruising on the cheeks. He did not remember whether it was on both sides. Cabon's evidence was that on being asked: "What happened to you?" Frost said: "I don't know." Cabon was unable to recall any other conversation. He did not hear Frost say (as Dassy had sworn): "I have been beaten. I have been beaten. I want to see my lawyer. I want to see a doctor." All Cabon heard was Frost saying: "I didn't do it. I didn't do it."

Cabon said that he remembered Frost as "a very difficult young man at times coming from court, that he caused a bit of a problem and [was] a bit rude to the officers and medical staff, but I was trained as a psychiatric nurse and I was able to quieten him and calm him down."

He stated that he knew how to quieten him down by talking to him. He also said that Frost was always on medication and that he "knew that he was an epileptic . . . sometimes we found it pretty hard to find his location and where he was" and that it was very important for nurses to know where the epileptics were.

Cabon said that the condition of Frost's face when he saw him in the hospital dormitory on Monday could have been either the result of a self-inflicted injury or a delayed development from something that occurred before he saw Frost in segregation. Cabon stated in answer to Mr. Carter that he would have expected to have seen evidence of bruising when he saw Frost in segregation on Sunday at 3:00 p.m., since this would be some 30 hours after the alleged assault at 9:00 a.m. on Saturday. Cabon said that his examination was limited to the face and that he was "more interested in the grand-mal hysteria".

EVIDENCE OF ROBERT McLEAN

McLean was qualified as a male nurse from a psychiatric hospital in Scotland. He also had taken a two-year course in general nursing. He commenced his employment in 1957 at the Toronto Jail and had worked as well at the Mimico Jail.

It was McLean's opinion that Frost was speaking incoherently when he saw him first in the segregation area. Frost was lying on his back under the metal bed and he "appeared as if he was in a seizure because his face was knocking the legs under". McLean indicated that Frost's head was going up and back. He stated he was unable to make out what Frost was saying. He noticed "some slight discolouration [of] both eyes . . . just below the eyes". When he later saw Frost in No. 5 cell, he said, "the face was swollen". He did not recall hearing Frost say "I have been beaten, I have been beaten, I want to see my lawyer, I want to see a doctor", as Dassy alleged, and said that he would have remembered this if it had been said in his presence. He denied seeing any scratches or cuts or dried blood.

EVIDENCE OF MARY EDNA KENDREW

Mrs. Kendrew had been employed by the Ministry of Correctional Services as a nurse for 17 years. The first nine years she spent at the Mercer Reformatory and the last eight and a half years at the Toronto Jail. During her tenure at the Toronto Jail, six years was on the female side and the last two and a half years on the male side. She was on duty on Sunday, May 26, from 7:00 a.m. to 4:00 p.m. and attended in segregation to give medication during her tour of duty and said that Frost had once refused medication. She stated that the guard said he would try and have Frost take the medication and he told her afterwards that Frost had taken it. She thought the correctional officer was Dassy and that Frost was in No. 5 cell, 3B segregation.

Mrs. Kendrew stated that when she saw Frost in segregation his face was "sort of all red with marks". She said that because of his beard there was not much left to see. The redness and marks were underneath the eyes and on top of the cheekbones on both sides of his face. "It seemed to be sort of swollen and red." Frost made no complaint to her of having been beaten.

Mrs. Kendrew indicated that drugs are prepared beforehand and kept in little paper cups with the inmate's name on them, and if an inmate does not take his medication, this is recorded.

Mrs. Kendrew also stated that if something unforeseen occurred and an inmate required medication that had not been prepared, she would have to phone the doctor. This would be exclusive of giving an inmate aspirin. This was the procedure for all of the nurses.

It is my opinion that a doctor should be on duty at all times as there may be

emergencies where medication is required and it is not possible or would not be satisfactory to have a doctor prescribe over the telephone. The inmate population at the Toronto Jail is sufficiently large (approximately 800), and in view of the nature of the population and the tenseness of the situation a doctor should be on duty at all times. No doubt arrangements could easily be made to have a rotating system of interns or residents from the major downtown hospitals serve tours of night duty. An experienced nurse, such as Mrs. Kendrew, would be able to assist less experienced residents or interns, but nevertheless there would be certain medical knowledge within the scope of a qualified doctor that might not be available to a nurse. Also, if a doctor's authority was required for medication this could be obtained at once. I have in mind here the possibility of serious illnesses or a heart attack or epileptic seizure during the night, or the possibility that a difficult patient will require speedy sedation.

According to the 3B landing log book, medication was given to Frost by C.O. 2 Theodore Crayston at 1:50 p.m. Mrs. Kendrew said that Frost was receiving medication three times a day (at about 8:00 a.m., 12:30 or 1:00 p.m. and 6:00 p.m.). Mrs. Kendrew stated that the medication cards were kept for three days and that new cards were then made out and the old ones thrown away.

A search of the register referred to as "Medical Refusals and Location" revealed no notation of medicine being refused.

EVIDENCE OF NELLO COLOMBUS WELSH

C.O. 1 Welsh was born in Trinidad in July 1943 and attained Grade XI education. He was employed as a police constable in Trinidad for 11 years and attained the rank of corporal. He came to Canada in August 1973 and commenced employment with the Ministry at the Toronto Jail on April 29, 1974. He had been at the Toronto Jail less than a month at the time of this occurrence. His height was 6'1" and his weight 175 pounds.

He stated that he was assigned to Corridor 2. He started working at 7:00 a.m. He woke up the inmates at approximately 7:05. They had breakfast and then cleaned the corridor. About 8:45 the cells were locked. Inmates were required to remain in the day area until after supper in the evening.

Welsh stated that Stafford came to the corridor and called the inmates to go to the exercise yard. All inmates except Frost and McPherson went to the yard.

Exercise is on a voluntary basis. Unless a person is excused for medical reasons, all inmates should participate in exercise. This relieves the tension and gives the inmates a change of scenery.

Welsh said that Stafford pointed out to him that there was an inmate "lying on some bedding in the corridor". As Stafford was senior to Welsh he (Stafford) "instructed me to go down into the corridor and remove the bedding

that the inmate was lying on". Welsh was not aware that there had been contravention of a regulation.

Welsh handed over his keys to Stafford and entered the corridor. It is standard procedure for security purposes, that the officer who enters a corridor will not have jail keys on him.

Stafford remained outside, at the grille. Welsh then ordered Frost to put the blankets into the cell. He stated that Frost used obscene language to him, saying that it was the second time that he had been bothered by Welsh that morning. Welsh said that he asked Frost a second time to put the blankets in the cell, and again Frost failed to obey his order.

The first encounter was at 7:00 a.m. when the inmates were awakened and Frost refused to get out of his cell – "he just remained laying in the bed". Welsh stated that he did not do anything at that time, as inmates may be left in the cell until later when the cells are locked up for the day. When Welsh came back to lock up the cells, Frost by that time was out of his cell. Welsh stated that, despite being required to do so, Frost had not put his cell in proper order. Welsh did not do anything to compel him to put it in order and did not have a confrontation with him at the time. Welsh stated that Frost's cell had not been swept out and the blankets were at the top of the bed and not properly folded. Frost was the only inmate in the corridor who did not comply with rules about cleaning up and folding the blankets.

There is no doubt that Frost was acting in a difficult and contrary manner. It is questionable whether this defiance of the regulations was something that would have been dealt with differently by a more experienced officer. Certainly, if Frost's cell was not properly arranged and swept, he should have been ordered to do so and then, on refusal of the order, placed on some charge. Open defiance by one inmate can affect the discipline of a whole corridor. Welsh felt, however, that there was a sufficient compliance with the regulation that he did not make a further issue of it at that time.

The cell area would have been inspected later in the morning by one of the senior correctional officers (in this case Nuttall) and, if it was not in order, disciplinary action could have been taken. Welsh stated that the inspection is not as rigid as in a military barracks.

On the second occasion, when he ordered Frost to return the blankets to his cell, he noticed Durball coming into the corridor. Apparently Stafford had unlocked the grille to allow Durball to come in. Durball then instructed Welsh to leave the corridor. Stafford and Durball were both C.O. 2s and Welsh a C.O. 1. Welsh stated that he then went out of the corridor and the grille was locked by Stafford. He then got the keys back from Stafford. Both he and Stafford stood outside on the landing while Durball was in the corridor.

Welsh said that Durball spoke to Frost. He was not able to hear what was said. Frost then started walking towards the grille and Durball was behind him. When Frost was about one foot outside the doorway, Welsh stated, Frost turned around and, "let me see, I would say fired a blow at Mr. Durball . . . with his right hand". Welsh said he could not remember and could not say whether or not the fist was clenched.

Welsh said that Durball then stepped back and Stafford took hold of

Frost. Welsh stated that when Frost turned around he did so very fast. Stafford "got ahold" of Frost's hand; "he pulled on him . . . Frost began to fight . . . he started kicking and punching Mr. Stafford . . . and Mr. Durball went to Mr. Stafford's assistance."

Welsh's evidence is different from Stafford's in detail. Stafford said he had grabbed Frost by the hair. In any event, they seemed to be *ad idem* in stating that Frost had swung at Durball (but missed) and this seems to have been the initiating factor. Frost was probably being taken out to segregation and if he had gone peacefully there never would have been an incident.

This seems to be an example of breach of regulations and resentment by a "difficult" inmate. If Frost attempted to strike Durball, whether his blow landed or not, Stafford was justified in restraining him. The matter apparently accelerated after that and got out of hand, and according to the evidence of Yurick and Wallace there was subsequent excessive use of force.

Welsh said it was at that time that McPherson came "from behind Mr. Stafford's back and started throwing punches at Mr. Stafford". Welsh stated that he could not say why McPherson did this. McPherson and Frost were not close friends and, if all that Stafford had done was to hold Frost's hand, I doubt that McPherson would have interfered. Welsh stated that Frost started kicking and punching, and there was a scuffle. Durball tried to put his arms around Frost — around the upper part of his chest and his arms. McPherson then threw his blanket on Durball's head.

McPherson did not convey the impression during his testimony of an inmate who would act irrationally. He would not, without Stafford or Durball having used considerable force on Frost, have reacted as he did. I think that McPherson's reaction was that of someone sensing what he thought was an injustice, and that this accounts for his attack on Stafford and Durball. Once again, however, it is difficult to weigh with precision the amount of force necessary to control a situation. Some leeway has to be given to the judgment of correctional officers, and it is for this reason that one must ensure that the correctional officers employed at the jail have maturity and common sense and will not over-react.

Durball threw off the blanket. Welsh said that he (Welsh) pushed McPherson "over" when he was punching Stafford and that McPherson then "fell down on the bench and the next thing I saw guards coming". Welsh stated that he did not do anything after that. Among the guards who came was one senior correctional officer, Nuttall. Welsh's next recollection was seeing Frost and McPherson being taken out of the landing.

Welsh denied Frost's allegation that he had pulled him to the floor backwards by the hair. Probably Frost had this confused with Stafford's action. There is no other evidence that Welsh did anything physical that could be criticized. Welsh denied seeing Durball punch Frost. Upon questioning, this was qualified to, "I did not see if he punched him". He stated that he himself did not kick Frost in the stomach, nor did he see any other correctional officer do this.

On examination by Mr. Salem, Welsh stated that he thought the reason Durball told him to leave the corridor was because "he is more senior to me that he would handle the situation better".

Was Durball's handling of the situation better, or was it more severe? Certainly Durball was justified in thinking that his greater experience would enable him to control the situation more easily. Was it his intention to use stronger physical action than he thought Welsh would use?

I have seen demonstrated a self-tightening plastic band that can be used as handcuffs. This could easily be carried by correctional officers. It can be put on an inmate quickly, and cannot be taken off without being cut. Consideration should be given to equipping correctional officers with these for restraining purposes.

Assuming that Frost did attempt to strike Durball, the situation might have been defused if Stafford had told Frost to calm down and come along with him. Then, if there had been some reluctance on the part of Frost to comply, Stafford might have ordered him to place his hands in such a position that he could be handcuffed with the aforementioned plastic band, or if necessary Stafford could have quickly and easily applied a plastic band whether Frost consented or not.

Psychologically, I think that there would be less reaction to the use of plastic bands than there is to metal handcuffs, the use of which has been criticized. At the present time at the Toronto Jail, correctional officers do not carry handcuffs.

EVIDENCE OF AUGUSTUS DURBALL

C.O. 2 Durball was born in Georgetown, British Guiana, in 1942. He had three years of secondary education there, and was employed for approximately seven years in the Guyana police force. He came to Canada in 1968 and began his employment at the Toronto Jail in May 1969.

Durball was approximately 5'10" and weighed 165 pounds. On the morning of May 25 he was on spare duty, that is, he had no particular assignment. At the time of the Frost episode he was going towards the exercise yard when Stafford called him. He said he was informed that Welsh was having some problems getting "some pillows and bedding off the floor. . . . He asked me to go down and see what is the problem there." He said Frost was not responding to Welsh's orders to remove the blanket. He then suggested to Welsh that he leave the corridor: "I knew he was only there for about three weeks. I figured . . . him being in the corridor, you know, will just aggravate the matter worse so I figured if a new officer went and handled the matter differently Frost would put the blanket and pillow back. That is the reason I sent him back. . . . I told Mr. Frost to put the pillow back. I told him that I don't mind a blanket on the floor, because the senior officer, he would go along with a blanket, but I didn't want the pillow, because Mr. Nuttall was going to do his inspection and [I] said to put the pillow back and just leave the blanket here."

Durball stated that Frost then used profanity to him and Durball then told

him: "You better go and see the sergeant." Durball stated: "I realized by that time he was under the influence of drugs, because . . . well, he was sleeping and when he was talking you couldn't understand what he was saying. It is not normal, you know — the way I approached him, it is not normal for somebody to react that way, you know."

Durball alleged that Frost picked up his blanket and "was walking towards the entrance of 2 corridor . . . just as he reached the grille, the entrance, he dropped the blanket and took a swing at me and I pulled back."

There is something in Durball's statement that is troublesome. If Durball was escorting Frost out of the corridor and to "see the sergeant", this would mean that Durball had indicated that Frost would be leaving the corridor. There was no need for Frost to take the blanket with him under these circumstances. Also, Durball had indicated that it was the pillow, rather than the blanket, that he was concerned about. If Frost was carrying the blanket and was going to put it back in the cell, should Durball not also have asked him to put the pillow in the cell? It is also difficult to understand why Frost, when he was told that he would be going out of the corridor, would go without protest about three-quarters of the way along the corridor and then suddenly, without warning or provocation, attack Durball.

Durball said that he was three or four feet behind Frost. The grille gate was open and just as they reached the gate Frost took his punch. The blow did not land.

Durball stated that another blanket came over him. This was thrown by McPherson from behind him. Durball pulled this blanket off. He thought that he was punched while the blanket was on him, but if he was struck, he said, it was not severe. He next saw Stafford grab Frost. He was unable to say where, as everything happened very fast.

He said the alarm went and Frost was "ranting and raving. . . . He was kicking and throwing punches so I went and tried to grab him from behind . . . just as I put my arms around him I felt a pain . . . in my right arm." This turned out to be a bite.

He then saw "Mr. Stafford keeping Mr. Frost on the floor. . . . I think Mr. Stafford pulled his hair, you know, pulled his hair down." He said he was having difficulty in recalling the sequence of events "because it was just a minor incident. It has been blown out of proportion really." This, of course, is understating the event, particularly in view of the evidence of other correctional officers and inmates. He stated that while Stafford was keeping Frost's body down, he (Durball) was trying to get Frost's feet so he would not kick. He said that after the alarm buzzer was sounded Nuttall and Moquin arrived. At that time, Frost was on the floor "kicking . . . and shouting and ranting and raving".

Moquin ordered Frost to be taken to the small reception area "because nobody knew what happened. The general impression was like two inmates fighting and the guards separating them."

Most of the incidents of violence at the Toronto Jail were the result of fights between inmates. Altercations between correctional officers and inmates were less common.

Durball said that when Frost was taken to the reception cell he and

C.O. 2 Joseph Furman each had one of Frost's arms and Moquin was walking behind them. He claimed that Frost had been lifted up from the floor by Furman and himself. This is contrary to the evidence of Stafford, who said that he had raised Frost, but it is understandable that different witnesses should interpret the same events differently.

When Frost was being placed in the reception cell he was not fighting any more but was swearing, and "he was threatening, he kept saying, 'Come in and get me, come in and get me' and he put his arm through the bars and said, 'Come on, I'll take all you goons on, I'll take all you goons on.' I just said, 'Go to sleep, Frost' – that's all. I may have hit his hand, you know, and said, 'Go to sleep.'"

Durball said he then went to surgery about the bite on his arm. It was cleaned and he was given a tetanus shot. He said that he did not see Frost again that day or the next.

Mr. Bynoe referred Durball to Frost's evidence that as he was leaving Corridor 2 he (Frost) said to Durball: "Come on, sir, don't be a [deletion]", and that Durball then "took a swing at him and missed" and that in doing so Durball hit his fist on the grille. Durball denied that he swung at Frost. Durball also denied that he punched Frost in the stomach. He further denied Frost's allegation that while Frost was being held down by a group of correctional officers Durball kicked him in the face, at least three times, drawing blood. This was alleged to have occurred after the alarm button had been pushed.

Durball also denied that after Frost was placed in the reception cell he (Durball) asked C.O. 2 Gordon Cameron to let him into the cell to answer Frost's challenge. Durball also denied that he had struck Frost in the reception cell.

Durball went on to indicate that a number of inmates sincerely wished to comply with the rules and rehabilitate themselves, but Frost was not one of these, and he gave this as his reason for Frost's statement against him. He also stated that Wallace was in the jail "on a very heinous charge and he knows I know. [Durball was referring to a charge of murder in which the Crown was alleging that Wallace had kicked a person to death.] I took photographs [Durball was at one time working as the jail photographer taking photographs of inmates on their entry into the jail] and I used to work in one of the corridors, so he would have a reason for making those allegations against me."

With reference to Dassy's allegation that Durball, in the tea room, had stated: "Gary, I believe there is going to be a hell of an investigation because Dr. Dickinson had witnessed the beating put on to Frost . . . we are going to have to cover it up", Durball denied ever having such a conversation and stated that Dassy's evidence in this regard was "totally untrue".

Durball stated that when Mr. Villeneuve was at the Toronto Jail he (Durball) was told to come to the Chief's office and was not told what he was wanted for, and that he "wasn't even briefed". When questioned about the need of a briefing before answering the investigator's questions, Durball answered: "Because that is why the word 'we' is there [in his statement to Mr. Villeneuve] instead of 'I'. If I knew I was going to give a statement to Mr. Villeneuve I would have had the facts straight in my mind. At that time

I was still in pain from the bite I had received.”

THE COMMISSIONER. This is on the 29th. That was four days later?

A. Yes.

Q. Surely that pain wouldn't have affected you to the extent that you would use that as an excuse for giving an erroneous statement or not concentrating on the statement.

A. I wouldn't say it is erroneous or not concentrating. I used the wrong word of “we” instead of “I”.

It may well be that, at the time of giving his statement to Mr. Villeneuve, Durball did not consider the significance of the difference between “we” and “I” and that he was not as careful in his choice of language to Mr. Villeneuve as he would have been had he been forewarned that Mr. Villeneuve was going to take a statement from him. On the other hand, there was no suggestion that Mr. Villeneuve did not properly identify himself or that he hid the purpose of his visit.

Further questions and answers on the above were put by Mrs. Peters, one of Dassy's counsel:

MRS. PETERS. Now why did you use the word “we”?

A. Because I was under the impression that Mr. Stafford or Mr. Welsh had ordered him out before.

Q. What gave you that impression?

A. Because they wouldn't have called me if they didn't ask him before.

THE COMMISSIONER. I thought you went in to have him put his pillow or blanket away, and it was only after that that you ordered him out of the corridor. There was no thought of him going out of the corridor if he had put his blanket and pillow away?

A. Right, sir. But I was under the impression that Mr. Welsh or Mr. Stafford had told him because it is only common sense for them to call me in a case where he might have refused.

Q. But you said earlier that you went in there in a quiet manner . . . and that you were trying to convince him to put the pillow away or the blanket away?

A. Yes.

Q. There was no suggestion at that time, was there, that he was to leave the corridor?

A. No, no.

Mrs. Peters brought out the fact that in his statement to Mr. Villeneuve Durball had given a somewhat different version of the events. Durball's statement reads in part as follows:

On Saturday May 25, 1974, at about 9:20 a.m. I was called into 2 corridor by Mr. Stafford. We told Frost to put the blankets back into his cell and he replied, [deletion]. We then ordered Frost out of the corridor and as he reached the gate of the corridor he took a swing at me. Mr. Stafford and myself then restrained Frost and McPherson came with the blankets and threw it over us.

Mr. Welsh, the Officer in charge of 2 corridor then pushed McPherson away. Mr. Nuttall arrived at the scene and I escorted Frost by myself to the small reception area across the dorm. Frost just walked across. He walked in front and I walked behind, Mr. Moquin was behind me. Mr. Stafford was with McPherson. I brought him to the small reception area, he grabbed me around the neck and said, "You Pakistani bastard." Then Mr. Gordon Cameron pulled him away. Mr. Moquin then entered the small reception area and Frost took a swing at Mr. Moquin. He was then escorted to the segregation area by Mr. Moquin and Mr. Nuttall. That's the last I saw of him.

The inconsistencies between Durball's evidence at the inquiry and his statement to Mr. Villeneuve were not wholly or satisfactorily explained, and this, of course, leads to some doubt as to the accuracy of some of his statements.

MRS. PETERS. You seem to be drawing a lot of inferences?

A. Well, I have six years experience, Ma'am.

Although the statement to Mr. Villeneuve mentioned a bite on the right hand, at the inquiry Durball said it was on the right forearm, and that there were teeth marks on the arm, although there was no rip in his shirt. He said that he also had an injury to the "hand itself" but denied that any injury was caused by striking the grille with his hand.

Durball denied discussing the Frost incident with other correctional officers, beyond saying to some officers that "they are making a mountain out of a molehill".

With reference to Dassy, Durball stated, "Mr. Dassy was a new guard and when we go drinking Mr. Dassy would come with us and we don't object." Durball said he did not discuss the Frost incident with Dassy. He referred to him as having a "hard head" and said he suffered from "phonegitis", indicating that when Dassy came on duty he was always picking up the phone and asking for various officers in the jail. He told Dassy "Gee man, you are suffering from phonegitis or something. Keep your cool."

He also said that he "called Dassy a pimp" and stated that at the farewell party for Superintendent Whitehead Dassy was "all dressed up. The only thing missing was furs." He stated that Dassy was "always ranting and raving. He always has problems."

On examination by Mr. Carter, Durball said it would be about three or four minutes from the time he entered Corridor 2 until Frost was lodged in the reception area. This would indicate that the episode did not take long and could explain some of the inconsistencies in the evidence of the various witnesses.

Durball's answers were at times inconsistent. Towards the close of his questioning, he stated that he left the reception area as soon as Frost had been lodged there, staying no more than a minute or so.

Durball also stated that when Frost was walking to the reception area he was "behaving himself" and was not "flailing out with his arms or legs or anything". He denied other evidence that there was a struggle while Frost

was being taken from outside Corridor 2 to the reception area.

He denied considering Frost a trouble-maker or knowing of any rumours to that effect before this event. He said that the bite did "annoy me a bit", but that he was not angry enough to retaliate, nor did the grabbing around the neck or the profanity directed at him in the reception area cause him to be angered. He contended that he was cool and under control throughout.

He denied having heard what Dassy said about Stafford's reputation for being "short tempered" and stated that he did not indulge in any talk about his work while at the jail. "If someone comes and tells me about their work I say, 'Listen, I'm on my lunch break. Let's talk about something nice.'"

Durball would appear to be a rather unusual person if what he said about discouraging "shop talk" is true. Certainly, if he did not see fit to initiate talk about his work, it is difficult to understand him trying to discourage someone else in the manner he described.

Durball gave as evidence that he thought Frost's actions were probably prompted by drugs, but he did not mention this to Mr. Villeneuve, and he explained this as being "because Mr. Villeneuve did not ask me". It was his opinion that Frost should have been in the hospital and not in Corridor 2 and that when he became troublesome in Corridor 2 "the psychiatrist should have seen him" and this should have been right after Frost came out of the corridor.

Durball related having seen an inmate bite and swallow a sergeant's finger. He agreed that it was advisable to have enough correctional officers come to a scene that they will act as a deterrent and control the inmate who is causing trouble.

He denied that anything happened in the reception area that would have accounted for blood on the floor, and stated that the bite he received caused "just a speck" to go through his shirt.

On being asked why Dassy would attribute certain conversation to him (about Durball having taken part in the assault on Frost and that "there's going to be a hell of an investigation"), he thought it was in revenge. "He is lying, sir, and he knows. I called him a pimp and I told him he has a hard head and suffers from phlegmitis. I said this in good humour and I think he took offence to this."

In any event, he admitted that his evidence was in conflict with Dassy's on the matter of such a conversation.

If I were called upon to choose between Dassy and Durball on this point, I would accept Dassy's evidence about the conversation. It was more clear-cut and less equivocal. Durball's evidence, generally, was not wholly satisfactory and his motivation could have been an attempt to defend himself or cover up an excessive use of force. Although Dassy was a person not without fault, I do not think that he was revengeful against Durball to the extent of concocting a conversation that never occurred.

Although Frost's attack certainly contributed to his subsequent predicament, I think that Durball resented the language used by Frost as he was being led out of Corridor 2, particularly if, as alleged, Frost "took a swing" at him. On the other hand, if the situation was as Frost stated, that Durball went to hit Frost and struck his hand on the grille, then in the aggravating

circumstances that existed I think Durball over-reacted, that Stafford and he both used excessive force on Frost, and that this prompted McPherson to come to the aid of Frost and throw the blanket, *after* Stafford had assisted Durball against Frost.

If a senior officer had been present, I think the situation would have been controlled and excessive force would not have been used.

EVIDENCE OF AMOS JOSEPH LUDWIK FURMAN

Other correctional officers called as witnesses arrived at various times after the "main event" was already in progress. One of the first to arrive was C.O. 2 Joseph Furman. He was typical of one group of correctional officers. At the time of the event he was 26. He had a university degree, a bachelor of science with a major in chemistry and a minor in psychology. He was 5'10" in height and weighed 140 pounds. He commenced his employment as a correctional officer at the Toronto Jail in September 1973.

Furman stated that he was on duty on the second floor and heard noises below which sounded like scuffling and, looking down through the rotunda, he observed a fight involving inmates and correctional officers outside Corridor 2. He also observed that the door to the exercise yard was open. In addition, he said that inmates were milling about the general area. "Some of them [corridor men] were collecting dishes from breakfast."

He stated: "As I came down to the bottom of the stairs I realized that if it was not an extreme crisis situation an extreme crisis situation could occur. As a result of that I pressed the alarm button." He said the button was located on the landing outside Corridor 1. He said that he observed McPherson being pushed by Welsh away from behind Durball and that Durball was struggling with Frost, and Stafford was trying to restrain Frost.

When Furman first saw Frost, he was still standing, and Furman thought it was Stafford who pulled him down. He stated that Frost was kicking, punching, shouting, and yelling before he was pulled down and that while he was down Stafford had a hand at the back of his neck and was holding his clothing and Frost was "still trying to punch and kick". He believed that Durball was holding Frost's legs down or trying to grab his legs. He indicated that he (Furman) was making sure that McPherson stayed out of it. Welsh then succeeded in calming McPherson. The next thing that happened was the arrival of Moquin and Nuttall. Furman thought they had come about 10 seconds after he had sounded the alarm. Both were coming from the Chief's office. They did not have far to go, through the rotunda to Corridor 2. He said that Moquin then had one of Frost's arms and he (Furman) had the other, and Moquin and he escorted Frost across the rotunda. He did not know whether anyone else was there.

While being escorted, Frost "was still acting quite violent . . . struggling.

still trying to kick back and get loose from the armlocks". He was also "rather profane in his language" but nothing remarkable happened while he was being escorted to the small reception area. The reception cell grille door was opened by another officer and "we simply let go of him once we had him in the reception area. I believe as soon as we let Mr. Frost go he took a swing at Mr. Moquin with his fists." The blow did not land. He believed that Moquin and he then grabbed Frost's arms again and set him down on the bench in the reception cell. He stated that he was then ordered to go to surgery and keep a watch on McPherson. He next saw Frost when he was being escorted to segregation. He said that Frost was "struggling and yelling" at that time.

Furman denied that he kicked Frost or that he hit him with his fist or leg. He had no recollection of Frost bleeding. While Furman was keeping watch on McPherson outside surgery, Frost was still in the reception cell and he was "noisy, ranting, raving, screaming and swearing. . . . At one point when he saw Mr. Durball there he used rather strong insults against Mr. Durball and at the same time trying to grab for Mr. Durball."

He saw Frost's wrists going through the grille. As for Durball's reaction, Furman said, "From what I can remember, Mr. Durball just sort of laughed it off." A question followed: "Is that not a bit unusual, for a person to be insulted in that way and be struck at and to just laugh it off?" Furman replied that "if you got upset by someone insulting you all the time, you would be pretty upset all day long".

When asked how often something like this would occur in the jail, he stated, "Sometimes nothing might occur for two or three days and then you have half a dozen incidents in one day." Although they would not necessarily be as extensive as the Frost incident, he said, such things would happen "I would be guessing, but probably once a week, a minimum I would say of once a week".

Furman believed that, when Frost went to grab Durball in the reception cell, "Durball either stepped back or knocked his hand away or something of that sort". Furman said that if an inmate takes a blow at a correctional officer and misses, "He usually backs off and it is a confrontation with words."

Furman thought McPherson "might have had a nose bleed" when he saw him in surgery. As to Frost's appearance, Furman said he never saw any "visible cuts, contusions, lacerations, or bruises to his face or any other part of his body". Furman said that the next time he saw Frost was after his return to the Toronto Jail following his escape from Whitby.

On examination by Mrs. Peters, Furman said that it was not unusual for a correctional officer to have a degree, although he understood that at one time it was unusual. He said that now, however, there are "quite a number of correctional officers with degrees, generally in the Ministry". He thought that in the long run these people would be in supervisory capacities more so than persons without degrees. Furman said that he was not interviewed by Mr. Villeneuve and he did not know why.

One part of his evidence related to an allegation by inmate William Wallace that, when asked his name he did not give his proper name but used

that of Appleton, another correctional officer.

Furman told Commission counsel that he had never told anyone his name was Appleton.

Mr. Carter asked: Have you or do you know of occasions when other officers, correctional officers, have referred to themselves in joking fashion as Appleton?

A. Yes, sir.

Q. All right. Is this sort of a standard joke around the Toronto Jail?

A. To a certain extent, sir, yes.

Furman explained that the joke about Appleton was that he was a man who "did his job well" and "to a certain extent at times did his job too well . . . he sticks to the rule book to the letter and does not wander off it either way. . . . He won't bend off the rule book . . . some of these come across comically . . . and as a result sometimes we refer to certain things, for instance, as you have pulled off an Appleton or your name is Appleton or things of that sort."

Wallace stated that he asked Furman for his name because Furman was involved in Wallace's testimony and he (Wallace) knew he was going to appear before the Commission to testify.

From the evidence and from watching Furman and Wallace closely when they testified, I am satisfied that Furman did tell Wallace his name was Appleton, as alleged by Wallace.

During the inquiry, we heard of games inmates played on correctional officers. This is an example of a game correctional officers might play on inmates. It is unprofessional and should be discouraged.

EVIDENCE OF JOHN HOWARD MOQUIN

C.O. 5 Moquin was born in October 1915 and had 22 years' experience in correctional services. He was 5'8½" and weighed 160 pounds. He was the shift supervisor on the morning of May 25, 1974.

Moquin said he was in the Chief's office with Robert Nuttall, assistant shift supervisor, when the alarm bell sounded, and that both he and Nuttall left the Chief's office. The alarm system in the old jail caused a number to show on an alarm box at the front door of the old section of the jail, and they were informed by the front door officer that the alarm had been sounded in the area of Corridors 1 and 2. Both he and Nuttall were wearing white shirts, indicating a rank of C.O. 3 or above. When Moquin arrived at the trouble spot, he stated, there were two inmates on the floor struggling with two or three officers. He saw that Stafford was holding Frost on the ground and pressing against him in a kneeling position. "He was either kneeling or bending as if - I'm not certain of the position he was in to hold Frost against the

ground." He said that Durball was "somewhere away from Mr. Frost".

He did not recall Durball doing anything with reference to Frost while he (Moquin) was present. He stated, "Mr. Stafford was restraining him. Mr. Frost was kicking and there was a lot of activity. I don't know exactly what he was doing. There was a lot of motion."

Moquin then said that Frost was brought to his feet. He (Moquin) was holding one arm in a restraining hold and there was someone else assisting him, he could not say who. Moquin stated that Frost required restraining as he was trying to resist and didn't want to be moved. "We took him across the dome . . . into the reception area and sat him down on the bench." Moquin said that nothing unusual happened. Frost was "just screaming" and he (Moquin) then walked out of the area. He was not aware of Frost having taken a swing at him. When he went back to Corridor 2 to assist in bringing McPherson across, Nuttall already had McPherson in an armlock, a restraining hold, and McPherson was then placed on a bench inside the surgery area. Moquin then returned to the reception area, and after the door was opened by someone he went into the cell with Nuttall. Frost was kicking and yelling. "He didn't want us to take a hold of him, I presume. . . . I warned Frost and I pointed at him and I asked him if he knew who I was. He looked up at me and said, 'Yes.' I said, 'Don't you ever take a kick at me again.'"

When asked about the condition of Frost's face at that time, he replied: "Nothing unusual, sir. He had long straggly hair, sideburns, and I really couldn't see too much of his face at that time."

Moquin said that Frost was asked to remove his shoes and he refused. "He was in such an agitated condition that we did not want to take any chances of him kicking us on the way and the first thing we ask him is to remove his boots. . . . He was shouting obscenities and we . . . tried to . . . remove his boots and I forced his head down and pinned him down like this to take his shoes or boots off . . . he unlaced them at that time . . . we removed them after he had unlaced them . . . we each grabbed one side of him and lifted him out and proceeded out." Moquin said that he observed no blood on the floor and that Frost's face was not in any different condition when he was taken out of the reception cell than when he was going across the rotunda.

Moquin stated that, on the way to segregation, Frost "was in a walking motion but he was resisting going and part of the time we dragged him. He wouldn't assist us in any manner and he was partially lifted by Nuttall and myself and partially dragged and he was shouting all this time obscenities."

Frost was held under restraint until they reached 3B segregation and nothing unusual happened on the way. He denied that Frost was slapped in the face by anyone while in the elevator. He stated that Frost took his clothing off but Moquin was unable personally to recall this happening. "But, I do know that he would not have been put into the segregation area without removing his clothes or one of us taking them away from him."

He did not particularly recall seeing any outward signs on Frost that indicated he had been assaulted. Moquin said that immediately after Frost was undressed he put on the segregation gown. He believed he would have recalled seeing marks on Frost if there were any, but he didn't remember anything.

Moquin was asked whether Frost went voluntarily into the segregation cell and replied, "I don't imagine he would go anywhere voluntarily and he was forced in because he was in an agitated condition throughout all of this thing. He didn't do anything co-operatively."

Moquin said that on a previous occasion Frost had been brought into the jail under the influence of drugs and was placed in 1 hospital dormitory. He did not allege that Frost was under the influence of drugs at the time of the May 25 incident. Durball is the only one to have indicated this. The weight of evidence was against Frost being under the influence of drugs at the time.

Moquin was then questioned about the statement he gave Mr. Villeneuve. It was slightly different from his evidence, in that he had advised Mr. Villeneuve that, when he arrived, Durball had hold of Frost and Stafford was holding McPherson. He had further stated in his statement that Frost "just walked" to the reception area "ahead of us" and that "Mr. Durball was pushing him". In his statement he had also said that "Frost took a pass at me with his arm and took a kick, but neither landed. I then sat him on the bench and gave him a warning." This evidence is at some variance with that given by Moquin at the inquiry. The interval of about seven months might account for the discrepancy.

Moquin did not recall saying "At it again, eh, Frost?" as alleged by Frost, nor did he recall Nuttall saying that Frost could walk down the stairs under his own power or could be dragged down by the hair. I find nothing significant or nefarious in either of these statements, if they were made to Frost. Certainly there is nothing wrong in Frost being given the alternative by Nuttall of proceeding on his own or being forcibly escorted. For what other alternative could the correctional staff have?

Moquin also denied that either Nuttall or he said to Frost that he was just like his old man, referring to Frost's grandfather, a former deputy governor of the Toronto Jail. Moquin thought that the deputy was Frost's uncle rather than his grandfather.

Moquin did not recall seeing Furman and was not aware of any other correctional officers answering the alarm, so that according to his recollection there were only the three original correctional officers, Nuttall, and himself.

Moquin, a senior officer, did not learn until the day he gave evidence at our inquiry that Frost "had taken a swing at Mr. Durball". One would think that this was important – an inmate attempting to strike a correctional officer – and that if it happened it would have been reported to Moquin.

Following a charge against an inmate, a Misconduct Report must be made out. This is the procedure at the Toronto Jail. The report, in this instance, was made out by Stafford. On the matter of the credibility of certain witnesses this report is important.

The report stated that Frost refused Durball's order to come out of the corridor and that he was then forcibly removed. At the gate of the corridor, Stafford states, Frost "attacked myself" and "I had to use reasonable force to restrain him". There is no mention of Frost having attacked Durball and it is only in the Misconduct Report that Stafford alleges that he was attacked by Frost. He did not make this allegation in his oral evidence and the state-

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MISCONDUCT REPORT

THIS REPORT MUST BE FORWARDED TO THE SUPERINTENDENT FOR HIS ATTENTION AND DISPOSITION THEREOF BY THE HEAD OFFICE.

NAME: Frost FILE NUMBER: 55513 INSTITUTION: Smith Jail DATE: May 24

DESCRIPTION OF MISCONDUCT: Report to warden

SECTION OF RULES CONCERNED: B-1-D

On duty as a guard officer in the receiving inmate from 2 cells of the institution I took charge of the inmate who appeared to be in the corridor to cause fellows and slanders with the head with ordered inmate that to remain in holding which he refused to do he was then kept out of the corridor by Mr. Durbell. He refused Frost was then forcibly removed. He got in corridor 2 inmates from the holding and I had to use reasonable force to remove him from C Durbell.

THE ATTACHED FOR ADDITIONAL COMMENTS:

DATE: May 25 1974 SIGNATURE: Mr. [Signature]

(2) INVESTIGATION

INTERVIEWED, INCLUDING INTERVIEW: JAMES FROST CO. [Signature]

Coc. Durbell CO. [Signature]

Sir: I observed James Frost being restrained by Officers on the landing outside 21 Brighton. He was acting "perverse" and shouting obscenities. Had him placed in the small reception area "cool off" but he refused to talk to me even though I attempted to interview him. He was sent to you and that for information. I am sorry that I was not with me at the time I placed him in Cell 33, for your consideration.

THE ATTACHED FOR ADDITIONAL COMMENTS:

REFERRED TO SUPERINTENDENT FOR ACTION

REFERRED TO SUPERINTENDENT FOR INFORMATION NO FURTHER ACTION RECOMMENDED AND

ADDITIONAL INVESTIGATION RECOMMENDED

REPORTING OFFICER ADVISED

REMARKS FOLLOWING INVESTIGATION

AWAITING HEARING PLACED IN SEQUESTRATION

AWAITING HEARING NOT RESEGREGATED

INTENDS TO GO TO MISCONDUCT SUPERINTENDENT TO COMPLETE PART 4 AND FIVE

INTENDS TO GO TO MISCONDUCT SUPERINTENDENT TO COMPLETE PART 4 AND FIVE

SIGNATURE: [Signature] DATE: May 25 1974

Parts 1 and 2 of the James Frost Misconduct Report dated May 25, 1974. This is a photocopy of a photocopy provided by the Ministry's investigator; the original was never found.

ment he gave Mr. Villeneuve alleges that Frost "took a punch at Mr. Durball". Stafford further stated: "I turned and got a hold of Frost and forced him on the floor. There were no blows struck."

In view of the inconsistencies between the evidence given by Durball and Stafford at the hearing and that in the Misconduct Report, it would appear that the Misconduct Report, made out immediately following the event, was more reliable and that there had been an attempt to mislead Mr. Villeneuve and this inquiry concerning the initial incident. The alternative explanation is that the Misconduct Report was in error and was designed as part of a cover-up.

Moquin said that he did not know whether Durball had filled out a compensation report for the alleged bite. As for Frost's kicking out, Moquin said that this often happens while inmates are being moved and that it is not necessarily intentional, but he thought that in this case Frost was trying to strike out at any form of authority and at any officers who were there. He said that this does not anger correctional officers and they make allowances for it. Certainly this should be understood by the correctional staff. Whether or not it was so understood in the Frost case is a matter of conjecture.

In answer to a question, Moquin said: "We are not allowed to administer punishment of any sort. It is not — it is left up to the superintendent. We used to at one time assign extra work to them and then we were stopped from doing this. If there was a behaviour problem then they would be put out to scrub the dome and we figured that this would keep them occupied and would take up their time. To take the fight out of them and to quiet them down. But at the present time, we are not allowed to take any form of punishment into our own hands."

Moquin stated that he subsequently visited Frost in the segregation cell. "I make these routine visits during the remainder of the day. Every time I go into the segregation cells, I observe each prisoner in his cell and I do this possibly three or four times a day. . . . We are just looking through a peep hole in the door." He stated that he did not see anything unusual or any visible marks or scars or puffiness on Frost's face when he visited him.

In the 3B segregation log there is a notation for May 26 at 1:55 p.m. of a visit by Moquin to the five segregation cells and all five were quiet. It was also indicated in the log that medication was given to Frost at 8:30 a.m. and again at 1:50 p.m.

The log indicates that Dassy came on duty at 2:45 p.m. and that at 3:00 Frost was acting up. It was at this time that Dassy phoned surgery and the Chief. A note by C.O. 5 Vassos Zodiates at 3:02 indicated "Frost having a seizure under the bed and bruised his face. Nurses McLean and Cabon arrived and gave him medication. Moved to end cell for protection."

This latter note tends to confirm the evidence of Dassy that Frost was acting up and banging his head against the bed, and it may well be that some of Frost's bruising was a result of this, and self-inflicted. This would also be in keeping with Dassy's evidence of his conversation with Stafford and Durball indicating that this self-abuse could offer a cover for any injury inflicted earlier by Durball or Stafford.

In answer to Mr. Carter's questioning, Moquin stated that, when there is a

disturbance such as the one that occurred outside Corridor 2, it was "always advisable . . . to remove the inmates involved in the trouble to stop further problems developing" and this was jail practice and policy. "There is always catcalls from the other inmates when they see a disturbance taking place involving the guards and other inmates. The other inmates start shouting and yelling at you, so it is best to remove him from the area before you get a chance to question them."

The 3B log for Saturday, May 25, indicated that Frost was admitted in charge of Moquin and Nuttall at 9:10 a.m. and that McPherson was admitted at 9:20 in charge of Moquin and Nuttall. At 2:05 p.m. Moquin had made an entry that he had visited and that Frost was asleep on the floor. He stated that if he had observed any marks on any inmates in any of the segregation cells he would have recorded that in the segregation log and "would have the inmate removed to surgery to be checked by the doctor".

The following day, Sunday, at 1:55 p.m. Moquin made one of his visits to segregation. Frost was "asleep underneath the bench. He was called to come for his medication and he refused to come out. I grabbed his ankle and pulled him out and the nurse gave him the medication — he sat up against the wall and took the medication orally. It was an oral medication and he laid down and crawled underneath the bed again."

Moquin stated that there is a regulation that calls for a document to be filled out and filed when an inmate is injured. This is called the Accident and Injury Report. He indicated that if there was a fight with another inmate and an inmate has "certainly been injured and sent on outside to another hospital, this report would be filed". He stated that there would be a similar report if the injury was by a correctional officer, and that there was no report filed with respect to Frost as he did not see any "apparent injuries" at that time.

The Misconduct Report consists of two pages, the second page containing parts 3 and 4; part 3 is a summary of the inmate's account of the incident and part 4 shows the disposition made by the Superintendent or Deputy Superintendent. With reference to the Misconduct Reports on Frost and McPherson, only page 1 had been completed. This was explained by the former Superintendent, Mr. Whitehead, who said he had referred the matter (and properly so, as will appear later) to the Ministry for its investigation, rather than conduct the usual investigation at the jail.

EVIDENCE OF ROBERT ARNOLD NUTTALL

This correctional officer impressed me throughout the hearing by the clarity of his evidence, his quick appreciation of problems, and his decisiveness. During the course of our inquiry he was promoted from C.O. 4 to C.O. 5. Nuttall was born in April 1934. He was 6' tall and weighed 180 pounds. He joined the Ministry in May 1969.

Nuttall said he was in the Chief's office with Moquin when they an-

swered the alarm. As he was proceeding through the rotunda he was able to see through the grille into the landing outside Corridor 2 and he saw Frost and Stafford on the floor. Frost was on his back and Stafford was on his knees beside Frost. There was another officer, he stated, trying to hold Frost's leg. Frost "was shouting obscenities. He was writhing on the floor and he attempted to punch Mr. Stafford. He was just generally going in four directions at once."

He also saw inmate McPherson struggling with Welsh. Furman was at the scene. Although Nuttall was half a step ahead of Moquin, he stepped to one side to let Moquin (the senior man) take charge. Since there were then three officers with Frost, he went to the "one on one" situation and took control of McPherson with an arm-lock. "I reached underneath McPherson's arms and caught his hand and held it with my hand, just like that. . . . The man has to come up with you."

MR. BYNOE. By that statement you indicate you applied leverage and his arm was in such a position that he had to straighten up?

A. Yes, sir.

Q. Did he straighten up?

A. Yes, sir.

Q. Did he stop whatever resistance he was giving initially to Mr. Welsh?

A. Yes, sir.

Q. Did he say anything?

A. No, sir.

Nuttall said that while he was busy with McPherson he did not observe what was happening to Frost. After he had McPherson under control he saw that Moquin and the other officers, Stafford, Durball, Furman, and Welsh, had Frost under control. He also remembered another C.O. 2 being present but could not recall his identity. There might have been another correctional officer as well.

When Frost was removed into the rotunda he was "to say the least, extremely reluctant. He was fighting against being moved. He was cursing, swearing, attempting to bite, attempting to kick, and attempting to break loose. Attempting to strike any officer around him."

McPherson quietened down until he reached the landing outside Corridors 7 and 8 and then he attempted to break away. Nuttall took hold of him again. Then McPherson became "very co-operative" and Nuttall sat him down on the bench outside of surgery. Nuttall went back to the Corridors 1 and 2 landing and spoke to Welsh and asked him what had occurred. He also instructed Welsh to make out a Misconduct Report. There was no evidence that any second Misconduct Report was made out, but Welsh did sign as a witness to Stafford's Misconduct Report on Frost.

Following this, Nuttall stated, he reported to Moquin what had apparently happened. At that time, Moquin was at the Corridors 7 and 8 landing "straightening his clothing . . . which was in disarray". He then went into the small reception area with Moquin.

When Nuttall entered the reception cell with Moquin, Frost was sitting on

the bench. He observed Frost's face. "It was half covered with hair. He has a heavy beard and it was very – he was perspiring profusely and his beard was wet and straggly."

Nuttall did not notice anything unusual or different with respect to Frost's eyes or cheeks. He saw no cuts, abrasions, or lacerations on his face. Frost had his head down while sitting on the bench. Nuttall thought that he was "rather distraught . . . he was mumbling to himself . . . and shaking his head".

Moquin had advised that Frost was to be placed in segregation, and ordered Frost to remove his boots. "And Frost just straightened up and took a round-house swing at Mr. Moquin." The swing did not land and Nuttall then "took ahold of him by the head and pushed his head down towards the floor so that he would not take another swing at the shift supervisor, Mr. Moquin".

Nuttall said that this did not anger him or cause any resentment on his own part. He recognized that Frost was "in a highly emotional state and you would almost expect it". He said that it was extremely important, in situations such as that, to keep one's cool. "Frost proceeded to unlace his boots. Then he started to struggle upwards again to try to straighten up against my hand without me removing his boots. I, therefore, concluded that he was not going to remove his boots and so I reached down with my other hand and grabbed ahold of a boot and Mr. Moquin grabbed ahold of the other boot and we forcibly removed the boots."

When they got his boots off, "he started cursing and swearing and that is where he started swinging at us with both arms. We contained the arms. I took one arm and Mr. Moquin took him by the other arm and we stood him up on his feet. Then, we just started dragging him from there and we started walking him and he pulled back and went limp. His body went limp and he was struggling with his arms and letting his legs fly and so it was necessary for us to lift and drag and carry him. . . . We proceeded directly across the landing to the head of the stairs leading down to the basement."

Frost was then taken along the hallway leading to the newer section of the jail. Nuttall denies saying that Frost could either walk down the stairs under his own power or be dragged down by the hair. "The inmate made it quite plain to us that he wasn't going any place. We didn't have any need for discussion."

Nuttall stated that Frost did not change his attitude and kept it up all the way to the elevator, when he "more or less slowed down a little bit. He quit absolutely going. He was starting to run out of steam." Nuttall stated that, in the elevator, Frost was not struggling as hard as before. He denied that he or Moquin made any reference to Frost's "old man, his father, or anybody". He also denied any slap to Frost's face.

It appears from Nuttall's evidence, which I accept, that Frost was resisting an attempt to place him in segregation, and that as far as Moquin and Nuttall were concerned they used no more than reasonable force to escort Frost to segregation; and this at risk of injury to themselves from a highly excitable inmate. Under the circumstances, and in retrospect, I think it would have been preferable, knowing Frost's highly excitable state, that he

be sedated while in the reception cell, handcuffed with a plastic handcuff band, and then escorted to segregation. It would also have been preferable that he be escorted by sufficient numbers of line officers to control him, and Moquin and Nuttall, or one of them, should have been in charge of that detail.

When Frost stripped to put on the segregation garment, Nuttall had an opportunity to observe Frost's body and there was nothing on his body "aside from just redness, which would be caused by exertion, just the general flush of the skin". I think, however, that such redness was also consistent with the initial application of force by Stafford and Durball as alleged by other witnesses.

Nuttall said that he then returned with Moquin to the small reception area to which McPherson had been moved by this time. Moquin decided that McPherson should be placed in segregation pending disposition by the Superintendent.

McPherson had at first indicated that he was "really going to the assistance of the officers and not to interfere with them", but Nuttall did not accept that.

Although I have indicated that the evidence of witness Christopher Marshall was most unsatisfactory, it is interesting to note the respect in which Nuttall was held by Marshall. Marshall stated that Nuttall had shown more responsibility towards inmates in this incident than other officers, and that he was the only officer who had not struck Frost.

On examination by Mr. Carter, Nuttall indicated it could not have been more than a minute from the time he arrived at the Corridors 1 and 2 landing until Frost was removed.

Nuttall was asked for an appraisal of Frost and he said that he was "a man who can become rather erratic". He was also asked whether Frost was under the influence of drugs at the time of the incident. He replied that he could not say definitely one way or the other. On general procedure when there is trouble with inmates such as this, he stated that the inmate should be removed from the area "as quickly and efficiently [as possible] and with the least possible fuss. Just get it over and done with and get the man out of the area so it doesn't have a chain reaction in upsetting the other men. They have enough pressures on them as it is, being incarcerated."

This indicated an appreciation for the problems of the inmates and how incidents such as this should be coped with. He also indicated that there were pressures on correctional officers as well. He said that when subjected to abuse by problem inmates some correctional officers "laugh it off, some plainly ignore it".

He did not consider, however, that some over-reacted, of which there was evidence from time to time throughout the inquiry. He denied seeing officers strike inmates except "when an officer would be defending himself while being attacked by an inmate". He further qualified even this by saying, "I would not even say it was a strike back, so much as to ward off a blow . . . we don't do that. Our attitude is that we try to . . . move in, and get as close in as possible, and contain a man so he can't get a swing going."

Nuttall denied any "bad blood" between Dassy and himself, stating that he did not know Dassy aside from the fact that "at one time he was working

in the Toronto Jail". He said that he did not observe any force being used on inmates, and that it was not a case of turning away when something like that might occur. "It is my responsibility and my job as a senior officer to observe what is going on and . . . to see that if these things happen, I take the first step in and stop it and write the man [correctional officer] up and have him in front of the Superintendent."

EVIDENCE OF STEWART ARTHUR GARRETT

The following 13 correctional officers who were alleged to have been present at the Frost incident were called and gave evidence that they were not on duty at the time: Lord, Morris, Peake, Thompson, Sills, Allgood, Anson, Wilson, Cockburn, Bassett, Casey, Todd, and Garrett. Their absence was supported by proper documentation. Garrett was, however, on duty on a later occasion, with reference to which he gave evidence. Another officer who had been named as being present was C.O. 2 Cardigan Williams. Although he was in the jail at the time, I am satisfied that he was not in the area where the altercation took place.

As a C.O. 6, Garrett was next in seniority after Mr. Farquhar, the Deputy Superintendent. He was not on duty on May 25, 1974. His first tour of duty following the event was on Monday, May 27, but on that day he did not see Frost.

Frost was of the opinion that he was interviewed in connection with the charge by either Garrett or Mr. Whitehead, and other evidence indicated that it was Superintendent Whitehead.

On June 20, Garrett put his signature to the memorandum indicating that Frost was advised of the results of the investigation. Garrett stated that he was present when the document was read to Frost by Mr. Farquhar. According to Garrett's evidence, Frost did not make any comment.

Garrett's name achieved some fame at the Toronto Jail with reference to the old segregation cells in the basement of the old part of the jail, which were referred to by some inmates and some staff as "Garrett's Hotel". Evidence was given before the inquiry indicating that, even after these cells were "condemned" and no longer in regular use they were employed at times as a threat and also for discipline purposes where charges had not been laid.

EVIDENCE OF THOMAS WILLIAM TURNBULL

C.O. 2 Turnbull was among those who were on duty on May 25, 1974. He was 6'2½" in height and weighed 220 pounds. He was born in England in

1930, came to Canada in 1966, and was employed at the federal penitentiary at Prince Albert for four years. He had prior experience in England as an officer in a Borstal prison.

Turnbull was on duty on the morning of May 25 and had been assigned to Corridors 7 and 8. His first knowledge of the Frost matter was when he saw Moquin, Furman, and Durball bring Frost across the rotunda towards Corridors 7 and 8. He said that Frost "seemed very upset. . . . He was trying to kick and he was trying to free his arm and to give a good punch at the officers and the chiefs at that time." Frost was being "brought under restraint". Moquin and Furman each had an arm and Durball was following about one pace behind. Turnbull had the key to the reception cell and opened the gate, and it was his impression that Moquin and Furman put Frost into the reception cell.

This is another example of different witnesses seeing and recalling events differently. Turnbull recalled that Frost was set down on the bench in the cell. When the officers came out, he locked the gate and then went over to Corridor 7. He heard Frost shouting. "He was really, really shouting, and shaking the gates." Turnbull said that he (Turnbull) was instructing the inmates in Corridor 7 to move back from the grille. "That is the normal procedure. You keep them away from the door."

Turnbull's estimate of Frost's time in the reception cell was 10 to 15 minutes. Later he said two "white shirts" and two or three other officers arrived at the reception area and the "white shirts" went in and brought Frost out "under restraint".

Turnbull described Frost as "unco-operative". He said Frost's hair was "tussled" and the part of his face that he could see seemed to be flushed from exertion, "you know, struggling and that". He described the colour as "reddish". He did not see any striking out by Frost or any correctional officer, nor did he see anyone mopping up the floor of the reception cell. He observed no blood on the floor of the reception cell. Finally, his evidence was a denial of Wallace's statement that Turnbull had grabbed McPherson by the hair and pulled him away from the correctional officers who were around Frost. I accept the evidence of Turnbull that he was not at the Corridors 1 and 2 landing during the initial occurrence, and was not one of the correctional officers who arrived as a result of the alarm being sounded.

EVIDENCE OF MARTIN DOHERTY

C.O. 2 Doherty was born in October 1933. He was 5'9" and weighed about 160 pounds. He was born in southern Ireland and spent four years with the British Army in the Far East. During that time he was associated with the military police at a military prison. In 1957 he came to Canada and he joined the Ministry in October 1969, after two other jobs during one of which he was a sub-foreman with Ontario Hydro.

He stated that he had been injured in three more or less major incidents while working at the Toronto Jail. Once he was bitten while assisting the police in restraining an inmate by the name of Robert Sine. On another occasion, involving an inmate by the name of Cannon, he was hit with a crutch and kicked. On the third occasion, with reference to an inmate named Marseal, his hand was cut with a plastic cup.

Doherty arrived at the jail at 6:20 a.m. on May 25, and went on duty at 7:00. His record for the month of May showed that he was scheduled to work on 21 days and that on seven of those days he worked double shifts of 16 hours each.

Doherty said that on the morning of May 25 he heard the alarm bell. At that time there were "inmates loose in the area of 7 and 8. And there's an old prologue that when you have people loose and once the buzzer has gone it means there is trouble somewhere in the jail, so the first thing you do is you get all of these people behind a closed area. Which I done. I was on my own in 7 corridor so I couldn't . . . respond. The only response I could make is what I actually done, lock everybody up that was moving. Well, I locked them into 7 corridor and I locked them into 8 corridor, whichever corridor they were closest to . . . a matter of speed and convenience."

Doherty said that he heard a commotion going on at the other side of the building, "a lot of shouting, cursing, and swearing, and screaming". The first he saw of Frost, he was being escorted by Furman and Moquin. Turnbull opened the reception cell and Frost was placed inside. "He struggled a bit and they sat him down on one of the benches."

He stated that Moquin and Furman then came out of the area. "Frost was being his usual self, ranting and raving and swearing. Every time he throws a tantrum he goes along with the same act." Doherty thought that he had seen Durball in the area but he did not see Frost grab at Durball nor did he see Durball apply any force to Frost.

Later, he saw Moquin and Nuttall come to the area, and on their instructions he opened the gate to the reception cell. He said that Frost was still cursing and swearing.

Frost was taken out under restraint by Nuttall and Moquin. "They took him under restraint down the stairs into the basement towards the new building." Doherty said he inquired if they needed any help with Frost and they told him they could "do it themselves". He stated that he locked the reception cell gate and he observed nothing unusual on the floor. He observed no blood on the floor nor did he see anyone mopping up or cleaning up the reception room area afterwards.

Doherty said that Corridors 7 and 8 were the busiest section of the jail. He denied Wallace's allegation that he had responded to the alarm button and gone to Corridor 2. He also denied Wallace's allegation that he punched Frost five or six times in the face, chest, and shoulders.

Like Turnbull, Doherty thought Frost was in the reception cell about 10 to 15 minutes. He did not think that Durball had entered the cell, as only Turnbull and he had the key. He said that while in the reception cell "Frost hollered a challenge at everybody that walked past that area, but anybody who would have taken advantage of that challenge would have been taking

advantage of a 90-pound weakling, so I don't think any correctional officer in his right mind would take up the challenge to a known drug user that is freaking out."

Doherty added that O'Hanley in the visiting area would not have been able to see from underneath the door into the reception area because of the angle and the bars. When this issue arose additional photographs were taken. Judging from these and earlier photographs, it would not have been difficult for O'Hanley to bend down and look under the half-door towards the reception area.

As for Frost's appearance, Doherty said "he was dirty and unwashed. His hair was long and straggly, plus his beard was all over the place . . . with the amount of hair, and the way he keeps it fixed, it is hard to say whether his face was flushed or not . . . unless you go about six inches from him". Doherty said he was unable to assist with any observation as to Frost's condition at the time. He saw him "quite a while after" in the dormitory area and at that time, he thought, Frost had bruises on the eyes.

EVIDENCE OF DWIGHT MALCOLM SLEIGH

C.O. 2 Sleigh was born in New Brunswick in 1945 and joined the Correctional Services staff in June 1973. He was 5'9" and weighed 170 pounds. He took the Ministry's correspondence course, which lasted approximately six months.

Sleigh stated that he completed Grade XII and that he took a three-week in-training course at Guelph.

On May 25, 1974, he came on duty at 3:00 p.m. and was assigned to 3B segregation. When he took over his duties, Frost was lying under the bed, and he made an entry in the log to this effect. He said that there was a form at the guard station in the area of the log book listing the inmates in 3B segregation, and it indicated that Frost was a "speed freak", that he was not to have any spoon, and that he was a "violent person" and epileptic.

He stated that this slip of paper was kept near the log book and gave the reason why each inmate was in segregation and "where they came from". The form was made out by the senior officer who put the inmate into segregation. He did not know whether the forms were kept. It is suggested that the proposed Toronto Jail Council review all jail records and forms and decide which should be kept permanently and which should be kept for specified periods of time.

On being referred to the log book, Sleigh noted the entries indicating "all quiet" in all the segregation cells. He said that during the eight hours he was on duty, when he looked into Frost's cell he could see his face, but not clearly as "he was always in back of the cell". He did notice that Frost was "red in the face" but did not notice any cuts, abrasions, or contusions. Earlier in the day Sleigh had worked on the 7:00 a.m. to 3:00 p.m. shift and was assigned

to Corridor 4. He had arrived at the jail at 6:30 a.m. By 11:00 p.m. he would have been in the jail for 16½ hours. Sleigh stated that he did not answer the alarm and attend at Corridor 2 and that he did not strike Frost in the face with his fist as alleged by Marshall.

On examination by Mr. Salem, Sleigh stated that the reason he did not respond to the alarm was that he was on the Corridors 3 and 4 landing with Furman. It was Furman who went downstairs and pressed the alarm button, and he (Sleigh) did not want to leave the landing unattended.

This is proper jail procedure. When two correctional officers are assigned to an area; if one leaves for relief or any other purpose, the second remains on duty. Although Sleigh admitted he could look between the open steps and see into the landing opposite Corridors 1 and 2 he did not do so, nor did he look into the rotunda area, and the reason he was not interested in doing so was that he had other duties. "I had a bunch of young ambitious men there I had to keep an eye on."

Sleigh stated that he was interviewed by Mr. Villeneuve, but he refused to give a statement unless there was another party in the room. He said that this was a result of his experience on another occasion when "someone had changed their statement".

I find it difficult to understand why, if Sleigh's evidence was completely negative on the Frost matter and he had no knowledge of anything referable to the Frost episode, he would insist on another officer being present, even if he had the previous experience that he had related. Certainly an investigation conducted by a Ministry inspector should have received full co-operation from correctional officers. Indeed, if Sleigh or any other correctional officer wished to have someone else present when giving a statement, or wished to have, for example, a union representative present, then I would suggest that the Ministry inspector should comply with the request, and thus get a statement.

Sleigh stated that Mr. Villeneuve's reaction to his refusal was "'All right' or something to that effect . . . 'If you are not going to give one, all right.' There wasn't much he could do about it." No statement was taken from him.

EVIDENCE OF HAROLD WARING

C.O. 2 Waring was born in Belfast in 1922. He was 5'9" and weighed 165 to 170 pounds. He completed Grade VIII and then spent 22 years in the Royal Navy, attaining the rank of petty officer. Prior to emigrating to Canada, he was employed for 10 years as a correctional officer in Northern Ireland, attaining the rank of lieutenant. He joined the Toronto Jail staff in July 1973 and completed a three-week course at Guelph.

Waring came on duty on May 26 on the afternoon shift (3:00 p.m. to 11:00 p.m.). He relieved Dassay at the supper hour and again at 8:22 p.m. He said that on one observation Frost was lying on the floor with his head close

by the door. He recalled that at one point in the evening Dassy asked him to come with him to have a look at Frost "as Frost had been banging earlier on in the evening and Mr. Dassy had stated things had gone quiet. He would like to look at the inmate to see if he was all right. . . . I was standing directly behind Mr. Dassy when he opened the cell door and I heard him asking Frost if he was all right. . . . I could not make out what the reply was."

Waring's post that evening, other than relieving at 3B, was at 3C.

It would, therefore, appear that proper procedure is followed to keep the segregation cells under close observation, and that when the officer assigned to the segregation area requires relief another officer takes his place and continues periodic patrols.

EVIDENCE OF THEODORE RAYMOND CRAYSTON

C.O. 2 Crayston was born in 1920. He was 5'10" and weighed 195 pounds. He had worked for 13 years with the Ministry. On Sunday, May 26, he was on duty in 3B segregation on the 7:00 a.m. to 3:00 p.m. shift. His 7:05 patrol notation was that all five inmates were "OK and quiet and asleep". He could not remember any problem when Frost was given his medication at 1:50 p.m. To his knowledge, no one entered Frost's cell during his tour of duty as he was in control of the key at all times. He stated that he did not notice any injury on Frost, but that his face looked a little bit red as though he had been "crying or something like that . . . not really red, I would say pink. . . . I don't know what his normal colour would be . . . this is the only time I ever saw him . . . his eyes looked like he had been crying. Some of the inmates do when they are in segregation. They get lonely and they cry once in a while. . . . If I thought there had been anything wrong with him I would have notified surgery to come up and have him examined by the doctor. . . . I couldn't see any injury around them, no black eyes or anything like that. . . . I didn't look that closely because, after all, most of the time I was looking at him I was looking through a little 14-inch square window."

EVIDENCE OF VASSOS GEORGE ZODIATES

C.O. 5 Zodiates was born in Cyprus in 1936. He was 6' tall and weighed 180 pounds. He had 12½ years' experience as a police officer in Cyprus. His father and brothers were also police officers. He appeared to be a conscientious and knowledgeable correctional officer. He stated that he joined the Ministry of Correctional Services in 1967. He worked as a corridor officer

for 18 months in all sections of the jail, and in the admitting and discharging area for two years. He was jail photographer and fingerprinter for one year. He assisted at the Ottawa-Carleton Jail for five weeks in 1972.

As for the evidence of Marshall that Zodiates was present on the morning of May 25 (outside Corridor 2), Zodiates was not on duty that day.

On Sunday, May 26, he was the shift supervisor (3:00 to 11:00 shift). He received Dassy's telephone call about Frost "having a seizure and banging his head on the bed". He went to surgery and obtained Nurse McLean. He also picked up two other correctional officers, Brown and Stafford.

When they entered the segregation cell "Frost was still banging his head on the steel bed. He was lying under the bed . . . and he was banging his head." In view of Dassy's report that it was a seizure, Zodiates interpreted it the same way. As for Frost's face, "he had puffy eyes . . . and a red face. And he was crying. I believe, sir, he was crying." He also believed that there were tears on Frost's cheeks. The nurses then administered medication.

Zodiates then put Frost into Cell 5 where there is no bed. He visited the segregation cells on subsequent occasions and inquired of the officer on duty about Frost. He acknowledged his signature to the note of Sunday, May 26, at 3:02 p.m.: "Visited - Frost having seizure under the bed and bruised his face. Nurses McLean and Cabon arrived and gave him medication. Moved to end cell for protection."

His later entry at 5:30 p.m. indicated that the area was quiet and there was a similar entry by him at 9:47.

It therefore appears that, as shift supervisor, Zodiates was visiting the segregation cells and, indeed, I could find nothing to criticize at any time throughout the hearings about the supervision or surveillance in connection with the segregation cells. They were patrolled and inspected at reasonable intervals by the landing officer. There was one landing officer for every five cells, and periodic inspection was made also by the senior officer on duty.

Zodiates said that his own impression of the seizure was not confirmed to him by McLean or Cabon, "Once the nurses were there, it was not my job . . . if it was not a seizure it was up to the nurses to say, or the doctor."

With reference to Frost's appearance, Zodiates said he had "puffy eyes and a red face" and that the bruising was "around the eyes or forehead". He stated that the marks on the forehead and above the eyes and nose were consistent with Frost banging his head in the manner he had seen.

On being asked about Dassy's credibility, Zodiates said that on another occasion, involving a black inmate by the name of Paris, he had found Dassy "lying". He stated that Dassy had asked for a misconduct sheet to write up a report against Paris for calling him "a white bastard". Investigation showed that Paris had not been acting up. As for Paris, he said that Dassy was "driving everybody nuts in this corridor". Zodiates stated: "I said, 'Why is that, Paris?' He said, 'Well, the first time he came in one of the cells was open there and he called out 'Okay you skunks, shut the cell', you know. Because of the way he behaved nobody responded to his order so he calls three times in a row and I could not take it any more so I stood up. . . . I asked him to come down himself and shut it up, and because I answered him back he didn't like it.' "

EVIDENCE OF JAMES B. BROWN

C.O. 4 Brown was born June 1941 in Scotland. He was 6'1" and weighed 235 pounds. He had been employed by the Ministry since March 1971 at the Toronto Jail. He attended a course at Guelph. On Sunday, May 26, he stated, he was working an 11:00 a.m. to 7:00 p.m. shift, in the admitting area. At 3:00 p.m. he was in the Chief's office with Zodiates when a phone call was received from Dassy stating that Frost appeared to be having an epileptic seizure. Zodiates asked Brown to accompany him to 3B landing. When they arrived, Frost was under the bed, and "appeared to be banging his head under the bottom side of the bed". Brown grabbed Frost by the ankles and took him out from under the bed. He was unable to say whether he saw any marks on Frost's face. As Nurse McLean was there, he allowed McLean to look after Frost and he returned to the admitting area.

EVIDENCE OF GERALD FIELDS

Mr. Fields was called to the Bar in March 1974. He appeared on behalf of Frost on May 29 in the Provincial Judges Court at Willowdale. He observed Frost in the holding cells of that court and recounted: "His face was badly bruised and swollen. I recall that he was wearing leg shackles, and at that time there were cuts on his face, and both his left and right eyes were black and blue and only partially open."

He stated that Frost gave him his version of what had transpired at the Toronto Jail and what had caused the injuries. As a result of that, Fields advised Frost of his right to lay criminal charges in connection with the alleged assault, although he stated that in his opinion the chances of success were not good, and that the most successful route would be to make representations directly to the Superintendent of the Toronto Jail.

Mr. Fields stated that as a result of representations he made to the Provincial Court Judge, Frost was referred to the psychiatric facility at Whitby.

He said he also represented Frost in connection with the charge of pointing a firearm at police officers following the escape from Whitby and that, on that occasion, Frost's face was still bruised, but not to the same extent as earlier.

EVIDENCE OF JOHN ROBERT FROST

This witness is the father of James Robert Frost. He stated that he saw his son at the Provincial Court on May 29. "He looked like he had been in an

accident. He was cut, bruised." He stated that both of his son's cheeks were lacerated and he had black eyes. His point of observation was from "back in the courtroom" (about 35 feet) and not "face to face". "He appeared to be staggering and could hardly stand up." Mr. Frost said that he then telephoned to the Toronto Jail and asked for information about his son and was told by the person on the phone that his son had had "an epileptic fit". He replied that his son had never had a fit in his life and asked for the identity of the person he was talking to and he was told " 'We don't have to give our names,' and this was the conversation."

Mr. Frost said that, a month later, on June 26, in company with Mrs. Eileen Auld, he visited his son at the Toronto Jail. His eyes still appeared to be black, "but very lightly, like they were getting over the blackness". On further examination he said that it is possible that he was mistaken as to the cuts or lacerations that he saw in the courtroom. It could have been "bruises or red marks", but there was no doubt about the black eyes. He did not see his son during the time he was at Whitby.

EVIDENCE OF MRS. HOPE EILEEN AULD

Mrs. Auld was the mother of another inmate at the Toronto Jail. She knew John Robert Frost and on June 26 travelled with him to the Toronto Jail for the purpose of visiting her son while Mr. Frost visited his son. She said that she had "said 'hello' to Jimmy [Frost] and I noticed that he had a black eye". She stated that she mentioned the black eye to Mr. Frost Sr. during the ride home. On further examination by Mr. Carter, she said that it was one eye, the left eye, and that it was not really black, "it was sort of faded".

It was indicated by Commission counsel, Mr. Bynoe, that Mrs. Auld's son was at the Lakeshore Hospital and could not be produced as a witness concerning the physical condition of James Robert Frost.

I have no reason not to accept the evidence of Mr. Fields, Mrs. Auld, and Mr. Frost (as later qualified) and I accept their evidence as to the appearance of James Robert Frost as of the times that they saw him. This confirms the information given by Yurick and others in 1 hospital dormitory as to the appearance of Frost when he was brought there.

EVIDENCE OF GERALD PERCY WHITEHEAD

At the time of giving evidence on January 10, 1975, Mr. Whitehead was Executive Assistant to the Executive Director, Adult Programme, of the Ministry of Correctional Services. From January 1965 to July 2, 1974, he

was Superintendent of the Toronto Jail. He began his association with the then Department of Reform Institutions in May 1954 at the Mimico Reformatory. In 1958 he was transferred to Millbrook with the then rank of lieutenant. The following year he was transferred to Burwash Industrial Centre, and in January 1965 he was appointed Governor of the Toronto Jail. The term "Superintendent" was introduced later in all Ontario penal institutions, just as the term "correctional officer" replaced "guard". No doubt these changes in nomenclature were to de-emphasize the military aspect. Similarly, there was a change in dress from a military type of uniform with cap, to green blazers and ties with grey flannel trousers.

Mr. Whitehead stated that when he went to the jail as Governor, James Robert Frost's grandfather was the Deputy Governor. The grandson was an inmate in late 1965 or early 1966, during the time his grandfather was on staff. Mr. Whitehead stated that the grandfather was particularly distressed to find his grandson in the jail and he (Whitehead) "took the time to talk to the boy in an attempt to help him . . . and in an attempt to straighten him out, for anything he had done wrong. . . . I did this with the full knowledge of Mr. Frost [the grandfather]."

Mr. Whitehead was not in the jail on the weekend of May 25-26, 1974. On Monday, May 27, according to his routine, he would have arrived in the jail at 7:30 a.m.,

and I would have a meeting with the Deputy Superintendent, Assistant Superintendent, the Captain who had been on duty. On the Monday morning, we would discuss matters that had occurred over the weekend. . . . And I would issue instructions that I felt should be carried out . . . after that I would have what we called the Superintendent's Parade in which inmates would apply, make a request to see me and I would see them and deal with their request and the problems that occurred either inside or outside of the jail. A multitude of problems. After that I would deal with any misconduct reports and I would check the segregation areas.

As for the Superintendent's Parade, the inmates would be brought to Mr. Whitehead on each landing and then "the officers would bring them to the interview room, and there was just myself and a senior officer, and a Deputy Superintendent there, and the inmate. It was private."

Mr. Whitehead saw Frost in the segregation cells between 8:15 and 8:30 a.m. on May 27. Mr. Farquhar, Deputy Superintendent, was with him and, Mr. Whitehead believed, also C.O. 5 Stanley Johnson.

An officer who was in charge of the segregation area opened cell door No. 5 and I entered the cell because I had a Misconduct Report which had been made against Mr. Frost over the weekend. It was my intention to hold a hearing into the misconduct. I entered the cell and Frost was sitting on his bed. He stood up as I entered the cell and I looked at him and I saw that he had contusions to both his eyes. Black eyes. Very much similar to . . . a raccoon. . . .

I said to Frost, "What happened to you?" And he says, "They beat me." I

said to Frost, "Who beat you?" and he said, "The guards." I said, "Which guards?" and he said, "Well, I don't know their names but I could identify them." So I said to him, "In that case I will not hear the Misconduct Report. I will look into the matter." I told him to sit back down on the bed. I also locked the cell and went out and had a discussion with Mr. Farquhar.

I decided then I would get in touch with the regional administrator and request that they send an inspector to the jail to investigate this allegation. In the meantime, arrangements were made to have him taken over to surgery to see the doctor. . . . I then went to my office and I telephoned the regional administrator of the central region, Mr. H. S. Cooper. I explained to him what I had seen, about the misconduct report, and the allegations that Frost had made to me. And I requested Mr. Cooper to arrange to have an inspector sent from head office to investigate these allegations. Mr. Cooper made these arrangements and some hour and a half later, I think, Mr. Villeneuve arrived to conduct the investigation. I gave Mr. Villeneuve all the information I had and he commenced the investigation.

At the inquiry I commended Mr. Whitehead for calling for an independent inquiry, and not investigating the matter internally, in view of the complaint that Frost's alleged assault was at the hands of correctional officers of the Toronto Jail.

The Ministry should also be commended on the promptness with which it reacted to Mr. Whitehead's request. Mr. Villeneuve arrived at about 10:00 that same morning.

Mr. Whitehead did preside over the McPherson misconduct hearing and McPherson was given 10 days in segregation with restricted diet. There was a notation to this effect in the 3B log for May 27.

As for Frost, he went to court the next day and was then transferred to Whitby Psychiatric Centre. He was returned to the Toronto Jail after his escape from Whitby and after pointing of a firearm at the police, on June 17.

Mr. Whitehead said that he saw Frost around June 17 or 18 and that Frost was still under the influence of drugs that he had taken before coming back to jail "and there was no way he could comprehend or understand anything that I said to him . . . his thoughts were tangential. The colloquial term is 'spaced out'. He really couldn't comprehend what I was saying to him and you would speak to him and he would talk about something else. There was just no way. I have a fair experience with this sort of thing and I recognized then that the doctor had him on tranquillizers for withdrawal. This generally takes four days but in a serious case it might take six or seven.

Well, I was trying to tell him, if I remember, the results of the inquiry. I think I continued there with him after having given him the results, told him that if he wanted to take action himself he was quite at liberty to do so and to see a justice of the peace. There is a justice of the peace there every day of the week and he could be presented to the justice of the peace to give any complaints if he wished to do so. But because of his condition I didn't tell him this and it was some days later, I think almost the last day (although I am not sure about

that), that I was talking to Mr. Farquhar, and Mr. Farquhar went to see him to give him the results of the inquiry. . . . We wanted to do this but until he was capable of understanding there was little point in proceeding.

In answer to questioning by Mr. Salem, Mr. Whitehead agreed that the reason he phoned the Ministry was that he "felt that there conceivably might be some validity or it was serious enough to involve the Ministry".

MR. SALEM. And, with respect to Frost, is it fair to assume that one of the considerations that you had was his physical appearance which would help you to decide how serious the allegation was?

A. Oh, most definitely, yes.

Q. So that when you saw him physically it was apparent to you that something happened?

A. Oh, absolutely.

Q. Now you testified that he had two black eyes?

A. Right.

Q. Do you recall any other physical criteria, any other bruises?

A. No. The other bruises would be under his clothing and this is the reason he was seen by the doctor but at that point in time – I am really not competent to know.

Q. I appreciate that.

A. I have a medical officer there and I thought that was the correct way of doing it.

Q. But in any event, according to your observation, the only thing that you can recall observing were the black eyes? There were no other scratches on his cheeks or lacerations on his face area that you can recall?

A. No.

Q. And that once you saw the swelling and the black eyes you weren't really concerned critically with observing the face? That was enough to send him to the doctor and that you had competent medical staff to do this?

A. That's correct.

EVIDENCE OF ALEXANDER LAWSON FARQUHAR

Mr. Farquhar was born in Manitoba in 1924 and held the position of Deputy Superintendent at the Toronto Jail. He served in the Canadian Army for four years in Canada and overseas and also had a spell with the United Nations Relief and Rehabilitation Administration in 1945. He joined the Ministry of Corrections in 1958 and received training at the staff school in Guelph. He rose through the ranks, and in 1965 became Superintendent of the Sudbury District Jail.

He came to the Toronto Jail in March 1972, first as Assistant Superintendent, and in January 1973 was promoted to Deputy Superintendent.

He stated that his normal working hours were from 8:00 a.m. to 4:30 p.m. and that he was "on call" every third weekend. He was also on emergency call in the evening. In the Superintendent's absence, he took the Superintendent's parades.

In connection with the Frost episode, Mr. Farquhar confirmed that he attended on May 27 with Mr. Whitehead at the Superintendent's Parade.

I was aware that there was a misconduct charge had been laid against Mr. Frost, and we visited the segregation cells on 3B landing for the purpose of holding a hearing into that misconduct. I was with the Superintendent when he entered the cell. Mr. Frost was sitting on the floor. . . . He stood up, and it was quite obvious that he did have contusions around the area of his eyes and immediately beneath them. The Superintendent questioned him and he asserted that he had been beaten. He said the responsibility was with the correctional officers. The Superintendent then decided not to proceed with the misconduct charge.

Frost had been in two different cells in 3B segregation. One of the cells (No. 5) had no bed. If Mr. Whitehead and Mr. Farquhar entered the cell together as they both indicated in their evidence, the recollection of one of them was in error as to whether Frost rose from his bed or from the floor when they entered. The discrepancy is of no great significance, except that it shows that witnesses attempting to recount past events, even on insignificant collateral matters, may differ in recall. Part of the explanation in this instance may lie in the number of times these two persons would have entered various inmates' cells. Mr. Farquhar continued: "We returned or went to the superintendent's office. We discussed the circumstances. We took into consideration that there was an obvious bruising of Mr. Frost's face, and after some discussion the Superintendent said that he would call the regional administrator and ask for an investigation by the Inspections and Standards Branch. I believe he made that call at about 9.30 [a.m.]."

Mr. Farquhar said that he heard later that Frost had "appeared in court and was remanded for a period of observation in the Psychiatric Hospital at Whitby. And further information came to us that he had in fact eloped from Whitby . . . Elopement is used in a case where there is an open psychiatric facility without a custodial responsibility, and it's possible for a person to rather walk away than make any escapes. So it is treated as an elopement."

With reference to a memorandum giving the result of Mr. Villeneuve's investigation, Mr. Farquhar said it was addressed to him because Mr. Whitehead was in the process of leaving the Toronto Jail. The memorandum did, however, go to the Superintendent, who was on duty at the time, and he asked Mr. Farquhar to make its contents known to Frost. Mr. Farquhar did so the same day, June 20. In the presence of Garrett, the contents were read to Frost and he replied in the affirmative when asked if he understood. The letter was then "initialled" by both Mr. Farquhar and Garrett.

EVIDENCE OF PAUL JOSEPH MULHERN

Mr. Mulhern, at the time of giving evidence, was one of the Deputy Superintendents of the Toronto Jail. On May 25, 1974, he was an Assistant Superintendent, and the senior officer in the jail. He was on duty in the morning of May 25. In the hierarchy, Deputy Superintendent ranks higher than Assistant Superintendent. The latter might also be referred to as Assistant Deputy Superintendent.

He stated that during a telephone conversation he heard the alarm signal and he observed Moquin and Nuttall "leave the office in great haste". After he had completed his conversation, he proceeded to the rotunda, where he observed Moquin, Durball, and Furman escorting, with considerable difficulty, an inmate who later turned out to be Frost. He stated that the inmate was "shouting obscenities". He was also trying to break the grasp on his arm and was attempting to kick out with his feet.

Mr. Mulhern felt that the situation was under control and returned to his office. About 10 minutes later, Nuttall and Moquin arrived at his office and he inquired as to the circumstances that "caused the alarm to go off and what the problem was". He believed Nuttall indicated he was still investigating the circumstances but had found out "that an officer had been assaulted by an inmate, another inmate had joined in, and then another officer had sounded the alarm. On Nuttall's arrival there was still some scuffling going on." The two inmates had been removed to segregation.

Later in the morning, Mr. Mulhern interviewed an inmate, John Robertson, who was in 3B segregation. When Mr. Mulhern stepped off the elevator on his way to this interview, he heard excessive noise coming from the cell area 3B. It sounded like someone banging on a cell door or banging a bed. He spoke to C.O. 2 John Osbourne who was in the area, and, accompanied by him, went to Frost's cell where he looked through the glass frame in the door and "observed that inmate Frost was standing on his bed jumping up and down shouting obscenities intermittently, completely naked".

He stated he finally got Frost's attention and Frost "jumped off the bed, made a lunge for the door, and gave the door a kick". Mr. Mulhern asked what the trouble was. Frost said that he wanted his medication, to which Mulhern replied, "If you learn to behave yourself or settle down I'll get your medication or I'll look into the matter of medication." Frost then "simply turned from me, went back to the bed and sat down. I observed him just sitting there with a vacant look on his face." Mulhern then said to Osbourne, "hopefully within earshot of Mr. Frost, since we had never opened the door, the inner door, 'Mr. Osbourne, I want you to contact surgery and make sure that he has had, or will get, the required medication, if he is on medication, and also make sure that he gets some water.'" With that Mr. Mulhern went on to his interview with Robertson.

Mr. Mulhern later checked and ascertained that Frost had been given medication that morning. During his observation of Frost through the segregation cell door window, he said, he did not notice anything unusual about either Frost's face or "the front part of his body. I couldn't see his

back." He stated that as a senior officer, when going to the segregation area, he pays particular attention to an inmate's physical condition and mental attitude.

He added: "... for the very reason that it is close confinement and it is quite possible that a prisoner in close confinement could change because of that, his mental attitude could change, he could attempt to physically harm himself and, of course, if there is any evidence of that, of course, we are going to get him out of segregation and re-locate him."

Mr. Mulhern learned from Nuttall and Moquin that Frost was a known "drug abuser" and he said that he had considerable difficulty getting Frost's attention when he looked into the cell, "and from my experience I got the impression he certainly was not his normal self".

He stated: "Well, one of the first things we will do – what I will do in any case – is have the inmate taken to the medical people and suggest whether or not possibly some sedation could be given to him that we can put him in one of the dormitory settings where he can do little injury to himself and others around him. It at least gets him out of that confinement, which is possibly his problem."

Mr. Mulhern also said that had he been aware of Frost suffering from claustrophobia he would "certainly act on it". He indicated that even the regular cells in the old building might cause a problem with some inmates who have to be placed in a dormitory setting.

On May 27, after the Superintendent's Parade, there was a discussion with Mr. Whitehead about calling for an investigation from the Ministry with respect to Frost's bruises about the eyes and Mr. Mulhern advised Mr. Whitehead that there were no bruises when he observed him on the 25th. Of course, his observation was through a small window. It may well be, also, that it would take time for the bruising to develop and become evident.

Mr. Mulhern stated that he got the impression from Mr. Whitehead that he thought something highly irregular had occurred. Mr. Mulhern stated that when he later saw Frost, after he returned from hospital, there was certainly evidence of bruising about the eyes. "I adopted the attitude that possibly something irregular had occurred as well," so that, in addition to the Ministry investigation, Mr. Mulhern decided to do some checking on his own.

During the course of this investigation, he spoke to Dassy who told him that Frost was banging his head on the bed to such an extent that he (Dassy) had to call for assistance, to which Mr. Mulhern said, "Well, that's what I wanted to hear about." He instructed Dassy to make out a statement to that effect. Dassy came back with a statement on foolscap. Mr. Mulhern told him that he did not want it himself, but to "make sure it gets to the inspector". Dassy's evidence on this point was that Mr. Mulhern had stated, "That's exactly what I wanted to hear." Dassy inferred a cover-up.

Even if Dassy quoted the exact words correctly, the statement of Mr. Mulhern was as consistent with his explanation as it was with Dassy's inference of a cover-up.

Mr. Mulhern stated: "I remember that exact statement that I made with respect to the fact that I was certainly relieved to hear someone that could shed some light on the mystery." Mr. Mulhern said it was never his intention,

no matter what words were used, to convey the impression to Dassy that he wanted him to say something that would cover up any improprieties on the part of the jail staff.

Mr. Mulhern indicated that, even though things happened quickly in the Frost episode after he had refused to obey the order to put the blanket and pillow away, "had the inmate not suddenly taken matters into his own hands and attempted to assault the officer . . . we would prefer having him brought before a senior official and possibly talking the matter out."

FROST SUMMARY

The Frost episode is one of a number of examples that came before the Commission of a mountain growing out of a molehill. It started with a breach of a Toronto Jail regulation prohibiting the removal of blankets from individual cells to the dayroom area. Ironically, this prohibition was later rescinded. The regulation had not been without some validity, based on health and security reasons. This was, however, outweighed when one considered the lack of amenities, of programming, and of plain seating accommodation in the dayroom area at the time. At any rate, when Frost was asked to return his blankets and a pillow to his cell, an argument arose. Neither side showed the good-humoured accommodation that would have put the matter back in its proper perspective, and the argument accelerated.

The relevant evidence, given by the various interested parties and witnesses, has already been detailed. The issue for determination, according to the Commission's terms of reference, is whether there was unnecessary use of force. In this regard, the episode may be divided into these five parts: (1) in Corridor 2 and immediately outside it; (2) on the way from Corridor 2 to the reception cell outside Corridor 8; (3) in the reception cell; (4) *en route* to segregation, including the elevator ride; and (5) in the segregation area and cells.

1. I find that, although some force was justified in removing Frost from Corridor 2, the force used by C.O. 2 Durball and C.O. 2 Stafford was excessive in the circumstances.
2. The force employed in taking Frost across the rotunda and placing him into the reception cell was not excessive. Force was necessary at the beginning of the journey because of Frost's struggling. This force accomplished its purpose and the latter part of the trip was made without incident.
3. I have great difficulty in concluding whether Durball struck Frost again in the reception area. I fully realize that Durball is entitled to the benefit of the onus, and that the onus is on a balance of probabilities and not beyond a reasonable doubt. Despite this, and even though I have wrestled with the problem for some time, there remains a lingering doubt in my

mind. If there was such a renewed assault, I am of the opinion that it was a result of provocation, threat, abuse, and an invitation by Frost. Although this could not be considered a justification, it was a mitigating and explanatory factor. In any event, if there was an assault by Durball in the reception area, it was of very short duration and secondary to the assault in or immediately outside Corridor 2.

I find that there was no unnecessary use of force against Frost in the reception area by any other correctional officer.

4. No more than reasonable force was used against Frost in taking him to segregation or in placing him in the two different segregation cells.
5. I believe that Frost sustained further injury while in segregation, but that this was solely self-inflicted, in keeping with his history of self-injury. This history was admitted by Frost during his evidence before the Commission.

There was no allegation by McPherson of ill-treatment, but, since there was evidence of the use of force to control him, I make the finding, ancillary to my findings with reference to Frost, that there was no unnecessary use of force against McPherson.

The Courts, MacLean, and States Allegations

"... Courts lunged at Peake, put his hands around his throat, and flung Mr. Peake back against the screen and was choking Mr. Peake. ... With that Mr. Casey and I moved in. We ripped Courts off of Peake's throat. We threw him to the floor. By this time three or maybe four other correctional officers came into it." (Gary Dassy)

"The force of Mr. Casey coming down that stairs is like a freight train hitting you." (Gary Dassy)

"I told him to give me something to put on the bun and he told me, 'Lunch is over.' " (Gordon Courts, referring to C.O. 2 Joseph Peake)

"I am not sure whether him falling on to the ground was due to him swinging or whether he was assisted in his fall to the ground." (Inmate Brian MacLean, referring to Courts)

"So I took off my blues. And they give me this white thing. It looked like a dress, and felt like cardboard. They said, 'Put this on.' " (Courts)

Inmates Gordon Brian Courts, Brian Douglas Stewart Patrick MacLean, and Arnold Charles States were in custody at the Toronto Jail on July 26, 1974. On that date an episode occurred which involved Courts, MacLean and States gave evidence with reference to this incident. In addition, they both

made allegations about themselves being assaulted by Toronto Jail correctional officers.

Courts was 23 and weighed 140 pounds. He was serving a sentence for driving while his license was under suspension, obstructing police, and impersonation. The allegation about his assault came to light in a *Toronto Star* article on October 1, 1974. That story was based on an interview with nurse Jane Mannerholm.

MacLean gave evidence before the Commission on January 21, 1975. He was 24 at the time and had completed Grade XIII education. He acknowledged being "in and out of trouble with the law over the years". At the time of the Courts episode, MacLean was in custody on charges of drug trafficking, possession of a restricted weapon, and possession of stolen property.

States had entered the Toronto Jail at the end of May or the beginning of June 1974. He was 18 at the time. He was born in Nova Scotia and had lived in the Toronto area for approximately three years. The charges that he was facing were theft over \$200 and failing to comply with the conditions of his probation. The previous year he had been sentenced to three months and probation of three years on charges of break, enter, and theft. At the time of giving evidence (also in January 1975) States had been unemployed for about seven months. He blamed jail with "interfering" with his employment "a bit".

1. Gordon Brian Courts

EVIDENCE OF GARY DASSY

Dassy alleged that the Courts incident occurred on a Friday afternoon towards the end of July 1974 and said that, at the time, he was "on visits", that is, escorting inmates to visitors' booths, and back to their corridors.

The visiting area was a part of Corridor 7 and Dassy was working with C.O. 2 Charles Casey on Corridor 8, which is next to Corridor 7. Corridors 7 and 8 were known as the court cells. C.O. 2 Joseph Peake was in charge of Corridor 7.

Dassy stated that Courts had been brought back from a courtroom and placed in Corridor 7. Peake had put Courts into the corridor and given him his lunch.

"From what Peake related to me afterwards, Courts didn't like what he was given . . . a hamburger bun . . . and he threw it on the floor. . . . Peake told him to pick it up and Courts turned around and told him to [deletion]. Peake then ordered Courts out of the corridor and Peake then said, 'Well, there's Dassy and Casey over here that will come in and get you.' With that Courts came out."

Courts then came out of the corridor onto the landing. Dassy stated that

Casey and he were on either side of Courts, but not holding him, and Peake was standing in front of him. Peake "told Courts that he had better not . . . talk like that or he was going to be given a lesson and as he was saying this to him he was jabbing him with his fist in the side of his stomach". Dassy was unable to say whether any force was being used. At any rate, "Courts was not showing any discomfort from it that I could see."

Later in his testimony, Dassy indicated that it must have troubled Courts, "because Courts lunged at Peake, put his hands around his throat, and flung Mr. Peake back against the screen and was choking Mr. Peake. . . . With that Mr. Casey and I moved in. We ripped Courts off of Peake's throat. We threw him to the floor. By this time three or maybe four other correctional officers came into it," including C.O. 1 George Thompson, C.O. 1 Alexander Sills, and C.O. 6 Stewart Garrett. He said that Garrett came very shortly after Courts was grabbed. Before he came, Courts "was being punched and kicked by all officers, including myself".

Dassy admitted kicking Courts once, around the groin area, with a fair amount of force. At that time, Courts was on the ground and "Casey was sitting on his stomach and hitting him . . . with his fist . . . in the face . . . I believe [with] a fair degree of force."

Dassy said that Sills and Thompson were holding Courts down. He did not see them deliver any blows and, as for Peake, Dassy thought that he "was still trying to get his breath back". Dassy did not know what the two additional correctional officers, whom he was unable to identify, were doing. "I don't know if they were punching him or kicking him too . . . I can't recall. All I can recall is what I did and what Mr. Casey did."

When asked what Garrett did or said, Dassy said that "all Mr. Garrett could say was 'What's going on around here?'" He stated that nobody took any notice of Garrett. Dassy said that he dragged Courts up. He had his arm around his neck in "a kind of a choke-hold".

Dassy said that he then started to move Courts to take him down the stairs towards the basement (and to the segregation cells in the new section of the jail). When "I was on the second or third – the second step I would say – still had Courts in the position of the choke-hold – Mr. Sills, I believe it was, and Thompson, and by this time Mr. Peake, were all grabbing for Courts. Mr. Sills had him by the hair and would not let go when I asked him to. The rest of them were still throwing punches at him around that area [the second step] . . . I was losing my balance. 'Let him go, let him go,' I said, 'I am falling.'"

Dassy said he was using "a fair degree of force" in his choke-hold and Courts was saying, "'Let me go, Mr. Dassy' I believe . . . or 'I am sorry, Mr. Dassy, I did not mean to do it,' something like this," and that he could have said that he had had enough. "The people were still grabbing at him, and I felt myself slipping. I let go of the choke-hold, and I grabbed for the screening to save myself from falling down the stairs."

Courts then fell down the stairs. Dassy was of the opinion that his releasing his choke-hold on Courts caused Courts to fall. He said that no one deliberately pushed Courts down the stairs. He fell down to the bottom of the stairway. This stairway is of hard concrete construction and probably could

tell stories about the people who have trodden up and down it for over a century, causing its present condition of wear.

After Courts fell to the bottom of the stairway, Dassy "went down to the bottom of the stairs, and I was still quite mad and started to hit Courts again . . . [with] my hand . . . on the back." Dassy said that Courts was on his knees in the middle of the corridor at that time. "I think he was pretty well done in by then, sir."

Casey then came "down and right into him", coming in contact with Courts's side. "Well, the force [of] Mr. Casey coming down that stairs is like a freight train hitting you." He indicated that Casey came down quite quickly and that as a result Courts went into the wall. Casey then hit Courts at least three times with "forearm blows", that is, between the elbow and the wrist on Courts's back, causing Courts to double over. "Mr. Garrett was still coming down the stairs saying: 'What is going on here?' " Dassy indicated that Courts was then in a "restraint hold" and that Garrett's inquiry was addressed to him (Dassy), Casey, and Courts. He did not see Peake, Thompson, or Sills at that time. Dassy said that in reply to Garrett he said: " 'You can see what's going on . . . you know what's going on.' " He thought that Garrett had found out that Courts had attacked Peake.

On further questioning, Dassy said that he was not sure whether he had answered Garrett's inquiry. Courts was then taken to one of the 2B segregation cells in the new wing. He was admitted to segregation at 2:40 p.m. on Friday, July 26.

Dassy said that there was no further difficulty with Courts and that Courts was very apologetic. "Just before we got off the elevator, Courts was saying: 'You know me, Mr. Casey. You know me, Mr. Dassy. I don't cause any trouble in this jail.' " Dassy stated that Garrett was in the elevator at this time.

Dassy said that he asked Courts why he had attacked Peake and "he said he didn't know. He didn't deny it. He just didn't know."

Dassy said that he did not notice anything unusual about Courts's condition at that time, but later he found out that Courts had been given drugs while he was in the court cells at the Old City Hall.

Inmates going back and forth to the various courthouses can receive drugs while out of the Toronto Jail and be affected by them on their return to the jail. Also, some inmates coming back to the jail, or coming into the jail in the first instance, attempt to smuggle in drugs. The use of drugs by the inmate population beyond those medically prescribed is one of the problems facing correctional officers. It can affect the behaviour of inmates and cause risk to other inmates as well as correctional officers.

Dassy said that Courts at no time complained about the treatment he had received from Peake. Dassy said that, when he was returning from the segregation cells, he "noticed there was blood all down one of my arms. I got back to the tea room and Mr. Peake was filling out the charge report for Courts." Dassy indicated that the blood might have been from a cut that he himself had received on the ear. He said that he required no medical attention. He said that he later spoke to Courts after Courts was released from segregation. Courts did not complain of the treatment he had received, nor

did he indicate that he recalled anything about it. "To me, he never related it to me. Like I say, I had no personal grudges against inmates. I was just doing what I was told – what was expected of me." "I imagine he probably did remember it, but there was no sense in going and rehashing the whole thing again."

Dassy said that it did not appear to him that Courts was under the influence of drugs at the time. "I was more interested in getting him off Mr. Peake with a choke-hold. You know, actually I thought afterwards it was strange that Courts would do something like that because he was a very docile prisoner."

Courts was released from segregation on July 31. The Misconduct Report completed by Peake described the misconduct as "attacking an officer contrary to regulation 23H". Peake's report read in part as follows: "While on duty on 7 corridor, inmate Gordon Courts complained that he was asleep when the meals were issued and as the meals had all been given out I told him that there were none left. He started to curse me in the foulest language . . ."

Part 2 of the Misconduct Report, covering the investigation by Garrett, indicated that Courts attempted to strike Peake and that he had to be restrained and was placed in segregation when he continued the use of foul language. According to Part 3, summarizing the hearing by Mr. Mulhern, there was a denial by Courts that he had attacked an officer and a claim that his "physical actions were defensive". It was indicated that he wished to make "amends" to the reporting officers. He was given indefinite close confinement, the first 10 days with special diet.

EVIDENCE OF GORDON BRIAN COURTS

Courts, in his evidence, stated that two drug offences were outstanding against him at the time of the incident, apart from the charges on which he had been convicted, and that in 1973 he was convicted of possession of narcotics and sentenced to three months plus probation of one year. There were other charges on his record, going back to 1968.

He said that on the Friday in question he had been given "some Tuinols" in the jail cells at Provincial Court, in the Old City Hall. He had received about 40 tablets. "They were spread out all over, everybody had some . . . I had about three or four of them myself . . . I had two of them in the City Hall cells . . . I dropped them. I swallowed them." As for the effect, he stated, "I wasn't really stoned."

He said that he returned to the Toronto Jail "in the first load . . . before lunch, I would say about 11:30 or 12:00 o'clock."

After he received a shower he was placed in Corridor 7. "We were sitting around and then we got a syringe and I did another one and a half." This would mean that in addition to the drugs he had taken orally, he also took

the equivalent of one and a half tablets intravenously, which would cause a more rapid reaction. "I just went over and passed out on the floor and went to sleep. . . . I could hardly see or walk or anything. I was just falling all over the place. . . . It was the first time I ever used them."

He stated that he was awakened when another inmate threw water in his face. He was "really hungry". He took a bun off the table and "went up to the guard . . . on the landing". He said this was C.O. 2 Joseph Peake. He related what happened next. "I told him to give me something to put on the bun and he told me, 'Lunch is over.' I said, 'Well give me something anyway.' He opened the gate to let some guy come in and he knocked the bun on the floor. So he laughed and said, 'I guess nobody's going to eat it now anyway.' So I told him to [deletion]. And then he told me to come out. So he opened the gate and I walked out, he locked the gate and started pushing me around."

Courts said he was pushed with both hands. "He pushed me up against the wall and then he pushed me up against a pole. He was telling me, 'Do you think you are smart?' and all that stuff."

Courts said that he was pushed, in all, three times by Peake. It didn't hurt him. After the third push, "I attacked him and ended up on the ground and there were about four or five guards standing around and they started kicking me and punching me."

Q. You say you attacked him?

A. Yes, I don't know exactly what I done, all I know is I ended up on the ground.

Courts stated that he did not remember attacking Peake, but admitted, "I know I jumped at him, that is all. . . . Three or four guards jumped on me, kicked me, and knocked me down to the ground. . . . I remember Casey was one of them, I am not sure who the others were, but I remember Casey."

He stated that Casey "was holding me down on the ground, he was sitting on my back, and my chest was pinned against the floor. And a couple of the other guys had my arms and legs holding me down and I was yelling at them, 'I have got enough, let me go.' Because . . . they were holding me down on the ground and they were sitting on my back and they had my hands pinned behind my back and they had ahold of my hair. They were holding my head up in the air like this and that's when Dassy came and kicked me in the face about five or six times . . . other guys kicked me and punched me . . . on my back, my neck and stomach."

He said that Peake also kicked, that he saw him kicking him in the back when he was on the ground. "Casey had my hair pulled at the back of it, at the back of my head so that my head was up in the air when I was going down on the ground."

He said that he had stopped struggling then and told them that he had had enough and it was "after that that Dassy came over. He come from in front of 8 corridor." He said that Dassy "kicked me in the face five or six times, maybe more, I'm not sure, six or seven times. He held my head back and he kicked me in the face."

Courts said that at the time no one else kicked him in the face (other

than Dassy) and that then "Dassy and Casey yelled, 'Let's get him out of here,' and the other guys sort of eased off a bit and Dassy pushed one of them out of the way and grabbed my other arm and then they, the two of them, sort of picked me up and dragged me over to the top of the stairs. . . . And while they were dragging me over some of the other guys were still kicking at me and they took me to the top of the stairs and then threw me down the stairs . . . I hit the stairs and rolled down to the bottom . . . I rolled to the bottom of the stairs and then Dassy jumped on me."

He said, "Casey and Dassy held me down at the bottom of the stairs with my arms above, behind my back, so I was bent over forward . . . Dassy had one arm and Casey had the other . . . three other guards came down the stairs, two or three other guards, and started kicking and punching me from there while them two held me at the bottom of the stairs and then they dragged me from there out to the hall."

He stated that Peake was one of the guards, but he was not sure who the other two were. He said that he then told them that he had had enough. He said he was kicked and punched in the face, the side of the neck, the side, and the back by the other three correctional officers while Casey and Dassy were holding him. Peake was yelling and screaming "I will kill him. Let me at him." He saw Peake come down the stairs after Dassy and Casey were holding him. Then he was "dragged to the hole". He remembered going down the corridor, but not going in the elevator, and he did not remember changing his clothing to go into segregation. "I remember going into segregation but I don't remember changing my clothing or nothing like that. When I wakened up I had a nightie on, that is all I know."

He did not recall seeing any "white shirt" until he spoke to C.O. 5 Vassos Zodiates the next night, although he did remember a visitor on the morning of the 27th, the next day. He described the visitor as his "girl friend". She asked him what had happened. "I told her I got beaten up by the guards and I was in the hole."

On the night of the 27th he asked Zodiates why he was in segregation and "he told me I attacked four other guards. That's all, and he said he would see what he could do to get me out."

On the 27th two guards came in "and they asked me who I thought I was, getting smart with the guards or attacking one of the guards". This was at the time of his misconduct hearing and he was told that he would be "doing 10 days in the hole or an indefinite sentence".

There were indications throughout the hearings that at times inmates did not appreciate the nature of a misconduct hearing. Whether this was because of naiveté or a lack of interest, feigned or real, or because the inmate was not completely candid at the inquiry, it was not always easy to say. It would be advisable, therefore, that as complete records as possible be kept with reference to misconduct hearings, and that some acknowledgement be obtained from each inmate, indicating what he has been told about the charge and the disposition of it, and about his right to call witnesses. As recommended, the Toronto Jail Council should sit on the review of a misconduct hearing when an appeal has been requested by an inmate or a correctional officer. There should also be an acknowledgement, in every case,



*Views up and down the old hollowed-out stairs
connecting the basement of the old building with
the landing of Corridors 7 and 8 on the first floor*

concerning the right of appeal.

Later in his evidence before the Commission, Courts acknowledged his interview with reference to the Misconduct Report, his answer to the charge, and also a knowledge of the disposition.

Courts said that he made no complaint to the officer conducting the hearing. "Well, I just thought, you know, just leave it at that, that's all. I said nothing else about it."

When asked if he had any injuries, he stated, "I had a thick lip and had a bleeding nose, and kick marks all over my face." It is unfortunate, if these injuries were the result of over-zealousness on the part of the correctional officers or of excessive use of force, that Courts did not make a complaint to the officer conducting the inquiry.

Courts stated that he asked for medical attention but did not receive any. He alleged that he asked Zodiates for medical attention, and Zodiates said he would send a nurse, but he never did.

If a permanent log were kept of such requests, it would be easy to ascertain whether this complaint was true. As it is, there is no corroborating evidence as to whether such a request was made and, if made, followed up.

Courts admitted that if Peake was hitting him, or pushing him, he would fight back. He also admitted the correctness of the evidence that he had his hands around Peake's throat and was choking him. Courts explained why he did not say so earlier: "Well, I didn't want to go into every little detail." This I did not find to be an acceptable reason. It would appear rather that Courts was trying to colour his evidence or to create a false impression of what occurred. Finally, Courts stated, "Well all I know, I attacked him and then I hit the floor."

The episode, therefore, appears to have been brought on by Courts's drugged condition, and the other correctional officers were justified in going to Peake's assistance. From the evidence of Dassy it appears, however, that excessive use of force resulted and that it was not just a case of restraining Courts, but of retaliating.

Courts stated that another correctional officer, Wong, who worked in the medical office, assisted in holding his legs down, and then afterwards said, "All right, let him go, let him up." This was on the landing and prior to being taken to the top of the stairs where, he stated, he was thrown down. If this evidence is correct, it would appear that at least one correctional officer felt that the episode should have ended at that point.

There was justification in having Courts removed to segregation. If Courts was thrown down the stairs in anger, this was, of course, palpably wrong. If, on the other hand, Courts fell when Dassy released his hold, then it may have been pure accident or the correctional officers may have been negligent or careless, or maybe even reckless to the extent of not caring whether he would be injured. Certainly if an inmate is taken to segregation, there should be a duty on the part of correctional officers to ensure that care is taken and that the inmate is not injured *en route*. No more force should be used than is necessary to keep him under control.

During Courts's evidence, an inquiry was made as to where he obtained the syringe for the injection of drugs, and he said it had been given to him by

another inmate.

Courts was asked why he did not make a complaint if he received the treatment alleged, and he answered, "Because I figured just to let it pass, that is all. You are not going to complain to the Superintendent, I did not say nothing." He was asked: "You did not ask to see the Superintendent?" He said: "No, if I go it would not do any good anyway."

This answer was not justified by any past experience of Courts, but seemed to reflect the inmate attitude of "them" and "us".

Courts stated, concerning his misconduct hearing before Mr. Mulhern, "I just stood there and listened. I was not given a chance to talk anyways." I do not accept Courts's statement that he did not have any opportunity to make a complaint. I think, rather, that he chose not to make one. This is further borne out by the following exchange:

THE COMMISSIONER. Did you ever ask to see any social worker or anybody else?

A. No, I just let it pass.

Q. When did you first make a complaint about this matter?

A. I didn't.

Q. When did someone approach you about it?

A. While I was out of jail the *Star* newspaper came to my house and told my mother they wanted to get in touch with me. I did not know nothing about it until then.

Q. Then did you tell someone from the newspaper about the episode?

A. Yes, but I told them not to use my name. I did not want my name in the newspaper.

Q. If a person is assaulted by guards regardless of the cause, is there any reluctance on the part of an inmate to make a complaint?

A. No, but I mean, I just never knew that it would do any good to — I never knew that I could charge them or anything like that. I just never thought of it.

Q. Was it that you felt —

A. It would do no good.

Q. Well that may be what you thought, but what was it you felt, that the treatment you received was in some way justified by what you had done to one of the guards?

A. Maybe, I don't know.

Q. Did you think you were getting your just desserts?

A. I guess so, yes.

Q. Is that why you —

A. I got 10 times as bad as he did.

Q. You feel that you had been treated in a more severe manner than was justified by what you did. Is that the situation?

A. Yes.

Q. But you made no complaints to anybody about it?

A. No.

Q. Had you seen the doctor at any time since you left the jail?

A. No.

Q. Mr. Courts, is there some code among inmates about ratting on guards or

other inmates? You know what I mean by ratting?

A. Yes, I guess there is, yeah.

As to the obtaining of Tuinol tablets in the Old City Hall court cells, Courts stated that one of the inmates in those cells had a bottle with about 40 or 50 capsules. Word spread about and Courts "went over and asked the guy for them". He said that another inmate from the Toronto Jail, Brian MacLean, was then given the bottle of capsules and MacLean gave him (Courts) 12 capsules.

Courts said that, not having taken this drug before, he did not know what the effect would be. He took two himself and gave some of the others away. In his evidence he indicated he was able to smuggle the capsules into the Toronto Jail wrapped in three pieces of tinfoil. He said the syringe came from an inmate who was "on the landing" and passed the syringe into Corridor 7. Courts emptied the capsules into the syringe, added water, and shook the mixture, and then injected it. The injection took about 15 seconds. "It made me really wobbly on my feet and a bit stoned, so I went over and laid down and went straight to sleep." He stated that he was awakened by his friend, MacLean. He was still to some degree under the influence of the drug and he admitted that his mental processes were affected, but he was not able to state to what extent.

When asked by Mr. Carter on cross-examination whether it would be normal for him to grab an officer by the chest or neck if he were pushed three times, his answer was "Why not?" He said, however, that he had never been pushed around like that before.

Courts stated that Casey was strong enough to throw him to the floor. This is probably one of the advantages of having correctional officers of strength and physical stature.

Courts said he had a visit from his lawyer, D. J. Bellehumeur, the next day, but he was not sure whether he mentioned the incident to him.

With reference to games that might be played by inmates on correctional officers, he denied "that an inmate that stands up and causes a correctional officer to get into trouble is looked upon as a sort of local hero".

EVIDENCE OF BRIAN DOUGLAS STEWART PATRICK MACLEAN

MacLean stated that in connection with a drug charge he had been appearing in court every week since early in June 1974. He recalled that Courts was at the Old City Hall with him on July 26 and that it was he who gave Courts the Tuinols.

When they arrived back at the jail, Courts was "a little loud and a little boisterous" and he was reluctant to give him the syringe when he asked for it, as he "did not want him to get too stoned". Then, since Courts was be-

coming "noisy and making a fracas over it", he thought it would be better to let him have the syringe and quieten down. He said that the effect was similar to that of alcohol and Courts's speech became a little slurred. He was unsteady on his feet, and his eyelids appeared to be heavy. MacLean described Courts as "Very noisy, very belligerent, and boisterous."

After Courts injected the 1½ capsules "he became very tired, drowsy, and he lay down on the floor and went to sleep".

MacLean said that when lunch was served in Corridor 7 he did not want to awaken Courts, who was still sleeping. He felt it would be best to just let him sleep. Then, around 2:30, he tried to "bring him out of his sleep", and threw some water on his face.

He said he expected that they would be assigned to their corridors "in a short period of time and I thought maybe I should try to straighten him up a bit so it would not be obvious to the staff at the jail that he was in fact under the influence of some drug . . . he came around and jumped up and started asking for his lunch which I explained that it had already been served. Then he went marching down to the grille and demanded some dinner from Mr. Peake who informed him that lunch had been served and that he might as well forget about his lunch. There was a bit of shouting both ways . . . and sitting on the table was a box of hamburger buns which had been distributed with the lunch but had not been eaten. Mr. Courts picked up one of the buns and went back to the grille and demanded something to be put on his bun so he could have something to eat. There was an ensuing argument and Mr. Peake opened the grille."

MacLean said that Courts was very belligerent. "The drug has a tendency to bring out belligerency in a user, but I think that in this particular case the belligerency was also brought about by the attitude of the guard towards the inmate who normally may have been able to pass it off but at this time was not. . . . I think that the way he was told that he was not going to get his lunch sort of brought his anger about whereas normally he would have been able to control his anger."

MacLean said that Courts used obscenity to Peake and that Peake then opened the grille and told Courts to come out into the corridor. "I saw Mr. Courts go through the grille and, myself and several other inmates who were further down the corridor, we walked up to the grille to see what was happening."

MacLean stated that his view was impaired "because of the screens and because of the grille" but "I saw what appeared to be a swing by Mr. Courts at Mr. Peake, which resulted in him landing on the floor. Now, there was quite a bit of action happening pretty fast, so I am not sure whether him falling on to the ground was due to him swinging or whether he was assisted in his fall to the ground. I did not see anybody grab ahold of him and throw him to the ground."

MacLean said that he saw Casey and then Dassy. Casey was restraining Courts on the floor. "I saw Mr. Dassy then kick Mr. Courts several times. It appeared to be in the body area below the neck."

He said that he could not see any of the other correctional officers doing anything, other than Casey restraining and Dassy kicking. "It was definitely

more than a nudge but he did not jump on him either. I would say that it would be a kick that obviously has some force in it or else he would not be kicking him. . . . Mr. Casey had him very much under control and I do not think there was any need to kick Mr. Courts at all."

MacLean stated that he never saw Casey hit Courts. His last observation was seeing Courts dragged out of view towards the stairs. MacLean said that he next saw Courts on July 31, momentarily, but did not notice any signs of injury.

MacLean was one of a number of witnesses who stated that Corridors 7 and 8 and the landing outside were "a very busy area at that time of day". With reference to the incident involving Courts, he stated that the "whole chain of events was very rapid, to my time of reaching the grille, so which guards were involved or which guards were just passing by, I have no idea, because I was sitting further down in the corridor just sort of staying out of the way so I don't know which guards were there previous to him coming out and which ones were there as a result of him coming out."

MacLean answered Mr. Salem's questioning by saying that "Mr. Dassy began kicking Courts". He said that at different times his view was blocked and that the whole incident until Courts "was dragged away" took one to two minutes.

On examination by Mr. Carter, MacLean reiterated that the only kicking he saw was by Dassy and that as far as Casey was concerned "all he did was restrain Mr. Courts on the floor".

MR. CARTER. Which of course would be what one would expect to occur when an inmate had attacked an officer in the way in which Mr. Courts had done?

A. Yes, I would expect the officer to restrain the inmate, yes.

Q. And no more than that occurred at far as Mr. Casey or Mr. Peake was concerned?

A. That's right.

EVIDENCE OF ARNOLD CHARLES STATES

States said he was told by another inmate that there was a big fight going on in the jail. He ran to the scene.

Q. What did you see?

A. I seen the guards. They had Courts pinned up against the wall.

Q. What were they doing?

A. They were just holding him when I seen him and then I saw Mr. Dassy come over and hit him on the side of the head.

Q. Hit him on the side of the head?

A. Yes.

Q. What with?

A. With his fist.

Q. What was Courts doing at that time?

A. Two guards had ahold of his arm like this. He was pinned up against the wall, he was struggling to get free and he was hollering something and I seen Mr. Dassy come over and hit him so I turned around and ran back downstairs.

Q. Why did you do that?

A. I did not want to stay around and get involved.

Q. How many times did you see Mr. Courts get hit?

A. I seen him get hit twice.

Q. At that first initial point, you mean?

A. Yes.

Q. Who hit him?

A. Mr. Dassy.

Q. Mr. Dassy both times?

A. First hit him here, and then hit him here on his shoulder blades.

Q. Indicating he hit him on the jaw?

A. Left side of the jaw.

Q. Left side of the jaw and left shoulder blade?

A. And then left shoulder blade.

States identified other correctional officers present as being C.O. 2 Charles Casey, C.O. 2 Joseph Peake and C.O. 1 Alexander Sills and said that the only one he had seen strike Courts was Dassy. "Mr. Casey had him by the back of the hair holding him up against the wall." He did not see anyone else participate. "That is when I ran back downstairs as I thought they were going to start coming my way so I did not want to hang around."

He then returned to the laundry room where he was working. It was off the basement corridor that led from the old building to the new building. He related that he was standing in the doorway when he saw Dassy, Casey, and Sills coming along the corridor with Courts, and then:

A. Mr. Casey had ahold of his left arm and Mr. Dassy had ahold of his right arm and had his arm twisted around like that and up behind his back so his face was almost touching the floor. I seen Mr. Dassy with his arm like that, Mr.

Dassy was ahead and Mr. Dassy kept taking a few steps and he would take a few shots with his feet, kicking Courts in the face and the side of the neck and the stomach and the ribs. Then at one point just as they got to the corridor out towards the kitchen at the elevator I seen Mr. Casey take his hand like that right down the middle of his back. Then they went on to the elevator.

Q. Well, maybe you had better describe that again?

A. As they had him by the arms, he was twisted, his head was touching the floor as they were going through the corridor. So I stepped over a bit further, when they got past, to see what happened. I seen them taking a few steps, when Mr. Dassy he kicked Courts, he was kicking him in the face, the neck, and the rib area. At another point, I see Mr. Casey take his hand, he still had one hand twisted around.

Q. The left hand?

A. Had both hands, and at one point he let go and just as he turned from the

corridor to go into the kitchen, where the elevator is, just as they got to the corner, I seen that Casey bring his hand up like that, and I heard a big thud. So I go around, I go further to the door, and I look like that; and Mr. Dassy says to me: "Mind your own business and go back to where you were at." So then they took him on the elevator and went upstairs, and I went back to the laundry room. So they were up there about from 10 or 15 minutes, when they came down.

Q. When you say they came down, who do you mean?

A. First Mr. Sills came down and went back and then Mr. Casey came down.

Q. Yes?

A. And then Mr. Dassy came down, and then Mr. Casey was coming down behind him and I was standing there smiling; and Mr. Dassy said to me, he said: "States, you are next", and he put his fist up like that, and he kept on walking right by, and as he walked by I said: "You think so?" and he turned around and smiled and said, "I know so."

Q. Did you see Mr. Sills doing anything, he wasn't holding Courts?

A. No.

Q. He didn't touch him as far as you are concerned?

A. No, he was there.

Q. Can you say whether Mr. Casey hit him?

A. I can say Mr. Casey hit him once.

Q. You can say he hit him once?

A. Yes.

Q. You saw that. The way you described it; you said you saw him swing and heard a thump.

A. I seen his hand hit him in the back. That's when they went around the side, around the corner. I don't know whether Mr. Casey hit him again or not. I ran up and they were getting on the elevator. That's when Mr. Dassy said you get back to where you came from, and I went back to the laundry room and stayed there until they came back down.

EVIDENCE OF JOHN EDWARD ATKINSON

Atkinson was a young inmate, aged 17. He also gave evidence with reference to the Courts incident. He stated that at the time he was assigned to laundry duty but was assisting in the kitchen. He said he was outside Corridor 7 "bumming around", although he was supposed to be on laundry duty. He said that Courts was one of the first to come back from the courthouse and be lodged in Corridor 7 (the court cells). Courts asked him if he could get him a syringe and "told me to go around and check". Atkinson said that MacLean was also interested in getting the syringe. He next saw Courts when he (Atkinson) came up with the first set of meals about 2:00 p.m. and Courts told him to "forget it, I already have one". He said that later as he was

bringing up some more meals and picking up empty dishes he heard Courts "mouthing off to Correctional Officer Peake and telling him what he could do with the meal".

Atkinson said, "I started to walk away and then I looked in the dome and I just turned around and was going to walk down the stairs, I had not reached half way down there when they already had him thrown up against the screen and had him pinned." He stated that the correctional officers who had Courts "pinned" were Dassy, Casey, and Peake. He said that Dassy "laid the boots to him" while Courts was lying down and that he saw Dassy kick Courts four or five times in the mid-section and the back of his legs. He said that Peake was holding on to Courts's hair and "I seen Casey I think only hit him once . . . in the head . . . I think it was [with] his hand."

Atkinson said that he then proceeded to the bottom of the stairs and Courts started falling down the stairs. He said that Casey and Dassy then came down and put Courts's arms "behind his back and started putting pressure on his back and he started screaming and I guess they took him to the segregation cells". He stated that Peake did not come down the stairs.

On a later occasion, Atkinson said, he saw Courts and told him that he had been a witness to what had occurred, "I told him, I said, 'Listen,' I said, 'I seen it. If you want me to say anything, I will, you know,' and Courts said, 'Don't worry about it.'"

EVIDENCE OF JOSEPH ROBERT PEAKE

This correctional officer began his employment at the Toronto Jail in June 1972. He was on duty at Corridors 7 and 8 at the time of the Courts incident. He was dealing mainly with Corridor 7 and there was another correctional officer in charge of Corridor 8.

These corridors served as a collection area for inmates going to or returning from court and were therefore referred to as the court cells.

C.O. 2 Peake stated that he knew inmate Gordon Courts by name and face prior to July 26 but had never had any problem with him. He said that Courts returned from court around 11:30 a.m. "He was one of the first in, the first load coming back."

Peake said that when Courts came in he was "quite jovial, we were talking . . . I was sitting on a table rapping away, talking to him." Courts, at that time, was in Corridor 7 up at the grille. Courts was inquiring about a special visit and Peake then went to see C.O. 3 James B. Brown in the admitting area, "to check if he was actually going to get this visit because coming back from court they are not normally allowed a visit unless there is some special reason. I checked with Corporal Brown and he said okay, he would arrange a visit. So I then came back up and told him it had been arranged and we would get him out for the visit. He seemed happy. He said I was the best screw in the jail."

MR. MCRAE. Did you notice anything unusual about his appearance, his condition?

A. His condition — he had just showered so he looked fresh and — and changed.

Q. You know what I'm getting at. He did not appear to be under the influence of drugs at that point?

A. Not to me at that time, sir.

Q. His speech appeared normal?

A. Yes.

Peake described the area as a "very busy place, they were coming in, fines paid or bail or something. . . . We usually count them around 10 minutes to two so we can tell the kitchen how many we are going to need and we try and include the ones that are already in from court but not up yet."

Q. What time approximately had you served the meals?

A. Ten after two, something like that.

Q. Would this be about the busiest detail for a correctional officer, working on 7 corridor?

A. I would say it is one of the busiest if not the busiest; and very important insofar as you have to watch who is coming back from court, who does not mix with who, which one has a mental problem, which one is a homosexual, and you try to keep them segregated, so you are really all over seven and eight and the bullpen.

Q. You have to be careful not to lose any prisoners?

A. Yes, you have to keep track. Now, some are wandering, going upstairs, and you have to keep your eye on who is coming in. . . . Well I had served all the meals. What was there was passed in as extra if they wanted it; because I have to get it cleared away before the next man comes on shift, and we usually have a cut-off about 2:30. . . . I was in the process of getting them out and started clearing up and take the stuff out. Gordon Courts came up to me then, and he had a hamburger bun in his hand and he asked for his meal; and I told him they had all been served. So he wanted something to eat; I said, well you will have to wait until supper time because everything was gone. So he was swaying on his feet, and he dropped the bun out of his hand and he told me to shove it —

Peake said that Courts's attitude had changed completely from when he was speaking to him at 11:30. Peake then opened the grille door and ordered Courts to step out into the landing. He said that the bun that Courts was holding "fell out of his hand, like a drunk man. This is when I realized there was something radically wrong with this guy. His attitude had changed, after talking to me and being such a nice guy earlier on. I told him to step outside; and then I locked the door and I took him by the arms and took him to the screen that is on the landing between 7 and 8 . . . beside the stairwell. So I placed him there in front. He was in full view of the opening in the rotunda."

Peake said that he did this "because I was going to talk to him. I was going to ask him what is wrong . . . and then he turned around and started

cursing and swearing, and after that – there was a look in his eyes. I was going to get an explanation and put him into surgery, and try to ascertain what was wrong with him. . . . I said that I wanted to speak to him myself rather than in front of the other inmates. So at that point he took a lunge at me and punched me in the mouth, and the chin; and put his arm around my neck . . .”

Peake said that he then called C.O. 2 John Minarik who came and took hold of Courts. Peake said that Courts and he (Peake) then both fell to the ground “and he went underneath me”. He stated that Casey and Dassy were also present and they came to assist “because Courts was then kicking and struggling and lashing out”.

Q. Were you hitting Courts, or anything, did you do anything to Courts other than what you have told us?

A. No, I was trying to hold onto his legs, he was kicking me. Mr. Casey then knelt on top of him.

Peake denied Dassy’s allegation that he was jabbing Courts with his fist in the side of the stomach while talking to him. He also denied MacLean’s evidence that he was pushing Courts, but he did admit to moving him “by the arm”. He said that he did this “to get away from the front of the other prisoners. Because normally, I don’t talk to any inmate regarding his conduct in front of other inmates.”

Peake admitted to wrestling Courts to the floor with the aid of Minarik, and that Minarik and he were trying to get “a hold of Courts, who was struggling, and I got hold of him and knelt on him. As far as I can remember this, and Mr. Casey then came to our assistance and held onto him too.”

Q. What was Courts doing?

A. Struggling away, lashing and kicking.

Q. Lashing with his foot?

A. Yes, his hands too.

Q. His hands and feet?

A. And Mr. Evers came to grab him by the arm.

Q. Mr. Evers came?

A. Yes.

Q. So now we have Mr. Dassy, Mr. Casey, Mr. Evers, and Mr. Minarik . . . and yourself?

A. Yes sir.

Peake said that Casey was “sort of kneeling, crouched on his legs.”

Q. Mr. Casey is a big man?

A. Yes, sir, right.

Q. He was kneeling on the inmate?

A. Yes, kneeling on his legs.

Q. Was Courts face up, or face down?

A. He was face down at this time.

Q. So he would be pretty well subdued when Mr. Casey knelt on his back?

A. Yes, sir.

When asked if anyone kicked Courts, Peake said that he did not know. "There was feet going in there. Now whether it was to try and block the kicks that he was throwing I really couldn't say. I was too concerned with him, rather than who else was there."

Peake then stated that Dassy lifted Courts to his feet and put an armlock around his neck. He believed that Sills, who had arrived during the altercation, assisted Dassy. Peake remarked that "Dassy said he had a hold of him and that was okay, he had him under control", after which Courts was taken downstairs to segregation. Dassy was almost carrying Courts. "He had a headlock on him . . . and was more or less keeping him on his toes and going downstairs."

Peake denied seeing Courts dropped down the stairs. Peake did not follow them any farther and went into surgery to get his face "cleaned up, which was bleeding at this time". He stated that his lip and chin were cut as a result of Courts's first blow. "I believe he scratched me or something." Later on, about three o'clock, he wrote up a Misconduct Report on Courts. He stated that the following week Courts came over to him and apologized. "He said he was sorry about what had happened, he had a bummer at court and just was high, he didn't really remember what happened." Peake was under the impression that Courts was no longer in segregation at that time. He said that he saw no sign of injury on Courts.

As for what the individual correctional officers were doing, Peake stated:

A. It's rather vague, sir, there were about five or six guards all around, everybody was trying to grab something to hold him at that time. I remember being behind him and him on the ground and me down there kneeling also trying to get ahold.

Q. If we assume those feet kicking in there, as you have described them, we assume there were kicks to Courts; was there any justification for that?

A. Justification? I don't know —

Q. Was it necessary, let me put it this way?

A. To some people it may have been necessary, to others, if they are big and strong enough, maybe not.

Q. Are you referring to the inmate as being big and strong?

A. Yes — no, the guard, if he is big enough to handle things without the kicking, he feels — but really, again, it is a matter of personal opinion as to what you should do to subdue a prisoner who's throwing his feet, flailing around.

THE COMMISSIONER. By that, do I understand you to say that sometimes kicking an inmate would be justified?

A. In certain conditions it would be.

Q. And what are those conditions?

A. Well, if you were alone with a man, an inmate, who would be, say, six foot two and the equivalent weight of 250, if he's coming at you — like a person like myself, only 150, there's no way I could get a grip on that man unless I could immobilize him immediately, which would be a kick in the kneecap to

stop him getting at me.

Q. Well, that would be a defensive manoeuvre.

A. Yes.

Q. But if there were a number of guards about and someone with the size of Mr. Casey was on top of an inmate, holding him down, under those circumstances is there any justification for a kick?

A. No, no, I don't think so.

Peake's answers to these questions were unambiguous and appeared logical. Certainly, if an inmate, much larger than the lone correctional officer with him, gave indication of intention to attack the correctional officer, the correctional officer would be justified in taking defensive measures to protect himself. But, as admitted by Peake, in the circumstances of this particular case there was no justification for a kick at Courts.

Peake was referred to the evidence of the Toronto Jail librarian, Henry Blum, who said he was present when Courts was called out of Corridor 7. "He passed me . . . I didn't pay attention to his hair or his facial features at that time because he had an unusual expression on his face which made me think that he was drunk and his eyes caught my attention. They were expressionless."

Blum went on to say that he thought Courts was "very drunk". Blum subsequently heard a scuffle going on behind him and when he turned around he saw three or four officers holding Courts down on the floor. "They had quite a difficult time to hold him down, this was quite clear."

He then recalled Courts being up and Dassy holding him "under his [Dassy's] arm and started down stairs towards the basement". He said that Dassy's arm was around Courts's neck and he also thought there was someone holding Courts's arms behind his (Courts's) back. "And Courts was, like, resisting, and the last time I saw him they were three or four steps down. I just went out, I went back to the dome and I didn't pay any attention to it."

THE COMMISSIONER. And he [Blum] seemed to indicate that it was quite obvious as Courts was coming up to the gate at 7 corridor that he was not in a normal condition. He was either drunk or something was wrong, and if that is so, now looking back at the matter in the cool of this room and in retrospect, if that is so do you think it is a good idea to call such a person out of the corridor and into a landing area?

A. Yes, sir, I feel that a person who is potentially troublesome has to be removed from the other inmates where he may cause some injury if he happens to start fighting.

Q. But up until that time he had not caused any trouble to any of the other inmates, had he?

A. As I say, if he had not been sleeping, his condition would look as though he had been sleeping, his attitude and his way of speaking.

Q. That was directed to you?

A. Yes.

Q. Not to any of the other inmates?

A. No.

Q. And the reason was because he had missed his lunch?

A. That is correct.

Q. Now, I am not suggesting for one minute that his attitude towards you was in any way justified but I'm just wondering, so that incidents like this might be prevented in the future, if there's not some way of dealing with an inmate in the condition that Courts was in rather than bring him out into a corridor where he is in the open and can then be upset to such an extent that he threatens you physically?

A. Yes, sir.

Q. Isn't there some way that he should have been dealt with other than that?

A. Well, I don't see how we can deal with him while he is inside the corridor. The reason I took him out was to ascertain what was wrong with him.

Q. Did you not see what was wrong with him?

A. At that particular moment, no.

Q. I see.

A. I believe there was another fellow coming back from court and when I opened the door to put him in — the place was really busy, sir.

Q. I can appreciate that.

A. Rather than having a long conversation while he is behind the bars cursing and swearing I remove him to talk to him on his own rather than any embarrassment or to let him be seen being reprimanded before the other inmates and of course with his condition I was going to take him to surgery after I got his explanation.

Q. Why did you need his explanation before you were going to take him to surgery if you had made the same observation as Mr. Blum? Would not the proper thing have been to bring him to surgery or to have others assist you in bringing him to surgery or have a nurse or doctor come to see him rather than invite a confrontation by having him with his back up against the screen and you the only one there?

A. At that time I thought it was best to take him out because we have to take him in, sir. Certainly the doctor won't come to them.

Q. Suppose the same thing were to happen today, how would you deal with it?

A. I would still remove the man from the corridor.

Q. Would you do it alone or have someone with you?

A. I would have someone with me.

Q. Yes. This particular time you were dealing with him alone?

A. Well, there was a guard over on the other side.

Q. What puzzles me is whether or not you were inviting some trouble with someone in the condition he was in, not a normal condition, and you started to question him with his back up against the screen?

A. Well, it is a matter of opinion. Now I know what was wrong with him, at that time I did not.

Q. I see. And of course while you were questioning him if you touched him in any manner I suppose that would tend to aggravate a person who was in his condition even more so?

A. Of course I had no reason to believe that he got drugs into the corridor coming back from court.

Q. Had you never heard that happen before?

A. I have heard of it the odd time, something like that, but he had just been through a search and shower so I really had no reason to believe it would be in there although it is possible.

The question arises, was Peake aware of Courts's condition, or should he have been aware of Courts's condition? If he was aware of his condition, then it would have been preferable to summon a senior officer rather than call Courts out to the landing. If, on the other hand, he was not aware of the condition, perhaps he should have been aware of it. This then might be a matter of training correctional officers to recognize such a condition, which was obvious to a non-expert such as the librarian, Blum.

The net result is that this is an incident that should have been avoided. There is no fault to be found with Courts's having been placed in segregation for such a flagrant breach of the rules, but had a senior officer been called and had the senior officer initiated the removal of Courts from the corridor and supervised his transfer to segregation, it is conceivable that no force of any kind (excessive or justifiable) would have been used against him.

Mr. Carter, counsel for the correctional officers, asked Peake some questions about duties and procedures.

MR. CARTER. And once a potential trouble spot like that is spotted, what are your instructions?

A. Isolating.

Q. What do you mean by isolating?

A. Removing the cause of the trouble as soon as possible or the two, whoever happens to be involved there.

Q. All right. Where could you have removed Courts to?

A. We would have put him in either 8 corridor if it had been empty or in the small reception area.

Q. Do you know if 8 was empty at the time?

A. At that time, sir, I believe there were visits going on, that is inmates coming down for their visits so I would most probably have put him in the small reception area.

Q. Had you had any indication prior to his coming up to the grille and discussing or asking for something to eat that he was under the influence of drugs or anything else?

A. On the contrary, sir. In relation to my other talk with him, he was the last person I thought would attack or come on with an attitude and actions that he did take.

Q. All right.

THE COMMISSIONER. Well, he had obviously changed because he was abusive to you before he came out?

A. Yes, sir. Of course, I attributed part of that to the fact that he had been sleeping because these men are up at 5:00 in the morning or they don't sleep too well going to court, some of them. He could have woke up in a bad mood as most of us have done, I believe.

Q. But you stated in this Misconduct Report that he cursed you in the foulest language.

A. Yes, sir, which he did.

Q. So that was completely opposite to what he had been like earlier.

Peake estimated the elapsed time from when Courts came up to the grille and spoke to him until he was removed from the corridor at 10 to 20 seconds. This would indicate a fast reaction on the part of Peake and it may well be that if a similar matter were to come up again Peake, who appeared throughout the proceedings as a mature correctional officer, would have reacted differently.

Peake indicated that he had sustained other injuries during his employment at the Toronto Jail. They consisted of a badly sprained thumb, injury to his face, and a serious bite on the wrist.

EVIDENCE OF CHARLES EVERS

C.O. 2 Evers was born in 1923 in England and had been on the staff of the Toronto Jail since March 1973. Previously he had 14 years' experience at Burwash Correctional Centre. He indicated that he was working "about 60 or 70 hours a month" overtime in addition to his regular 40 hours a week.

Evers said that he was one of the two correctional officers assigned to Corridors 7 and 8, the other being Peake. He confirmed that Courts became abusive in his language to Peake and used obscenities, as a result of which he was called out of the corridor by Peake.

Evers was asked about Courts's condition and he replied: "Well, he seemed to be a little hostile at not having a meal and he appeared to be under the influence of drugs." Courts's eyes were a bit glassy and he said that he noticed this as Courts was "coming through the grille". Again one might inquire as to why Peake, who was in direct confrontation with Courts, was not able to make the same assessment as to Courts's condition.

Evers stated that Courts was led over to the "screen" by Peake. He could not hear what Peake was saying to Courts, "There was quite a lot of noise. By that time there would have been 40 or 50 inmates in that one corridor and there was also a radio blaring out so there is quite a lot of noise there."

MR. MCRAE. Did you see anything happen between Mr. Peake and Mr. Courts?

A. Yes, all of a sudden Courts attacked Mr. Peake.

Q. Before Courts attacked Mr. Peake, did you see Mr. Peake poke or jab Mr. Courts?

A. No, I did not, sir.

Q. Or push him?

A. No.

Q. Were you watching?

A. Yes.

Q. If such a thing had happened, would you have seen it?

A. I would have, yes.

Q. You are certain it did not happen?

A. I am certain it did not happen.

Evers was then questioned about Dassy's statement that Peake jabbed Courts with his fist, and his answer was a little more qualified:

Q. Could it have happened without your seeing it?

A. I don't think so, sir.

Evers then said Courts "went for" Peake with both hands around Peake's neck. "It could have been a punch and a grabbing motion. . . . When he attacked Mr. Peake there was a wrestle between them . . . it did not last too long and then they both seemed to topple over and then there was an officer came over."

Evers stated that it was either Casey or Minarik who arrived first to assist Peake while they were both on the floor. Evers said that he thought Casey was holding Courts's legs and another officer was trying to hold Courts's arms. He (Evers) knelt down and was holding one arm. He said that he was "too busy . . . to watch what everybody else was doing". He did not see Courts being kicked, but this could have happened without him seeing it. He recalled Dassy putting a headlock on Courts and indicating that he could handle Courts by himself. He said that Dassy took Courts down the stairs with another officer following. He did not see Courts fall, even though he believed he "saw them go right to the bottom of the stairs".

This is, of course, contrary to the evidence of Dassy and Courts and is difficult to understand except that possibly Evers returned to his station before they reached the bottom. Evers estimated as "not more than five minutes at the most" the time from the ordering out of the corridor until the going downstairs.

EVIDENCE OF CHARLES EDWARD CASEY

This correctional officer was born in 1949 in Truro, Nova Scotia. He was 5'11" in height and weighed 275 pounds. He started working at the Toronto Jail in December 1972. He took the correspondence course and also the three weeks of in-training at Guelph. He stated that it took him seven months to finish the correspondence course.

With reference to overtime, he said that he usually tried to do two extra shifts "or a little more" every week (a shift is eight hours).

Casey recalled the Courts incident. He said that, at the time, he was working on "visits". That is, he was escorting inmates to and from the

visiting area. His first knowledge of the incident was seeing Courts and Peake wrestling on the floor. He did not think he heard anything prior to that time "because the noise was too much blaring from radios that are on there all the time".

Casey took 15 or 20 seconds to complete what he was doing and to get to the scene and by that time Minarik and Evers were there. "They all had hold of him [Courts] . . . I grabbed hold of him, too . . . I have heard that I had hold of his legs, and I couldn't say for sure what part of him I had hold of."

Casey said that he did kneel on Courts's legs but he did not know he was kneeling on his back. Courts was "kicking, hollering . . . He was just acting like he was going to try, you know, trying to hurt somebody." He was unable to say whether he had grabbed Courts by the hair. "If there's no place left to grab him, I might have grabbed him by the hair." He said that Dassy came over. "We all lifted him up on his feet and Mr. Dassy got him in a headlock."

With reference to the stairway, Casey said: "I remember Courts grabbing ahold of those bars. He probably thought he was going to get thrown down the stairs or something. Anyway, he grabbed ahold of the bars. Mr. Dassy had him in a headlock so we had to get his hands away. . . . I believe he was right at the very top of the stairs holding on to the bars right there . . . and somebody was there trying to knock his hands away, trying to pull his hands away."

Casey said that Dassy "run him down the stairs, and I was running behind him. He run him down the stairs and at the bottom of the stairs I grabbed him, put him in an armlock. Mr. Garrett was behind me and Mr. Dassy grabbed the other arm at that time and we took him across to the elevator and then up to — I thought it was 1B, but the records here show it was 2B."

Casey stated that he did not see anyone kick Courts, although "it's possible, anybody could have kicked him. I wasn't worrying about what anybody else was doing, I was there to protect myself and restrain the man."

Casey denied Dassy's testimony that Dassy had let go of Courts on the stairway, allowing him to fall down the stairs.

MR. MCRAE. And you say that didn't happen?

A. It did not happen. I was in a position to see because I was right behind him.

Q. Mr. Dassy went all the way down the stairs with Courts in this —

A. He had him under his arm, he had him in a headlock.

THE COMMISSIONER. Why would Dassy say that he threw him down the stairs, or let him go down the stairs when according to you, that did not happen? Do you have any reason why Mr. Dassy would say that?

A. No, sir.

Q. Because it sort of implicates him, doesn't it? . . .

A. I have no idea, sir, why he would say that.

The difference between the evidence of Casey and Dassy concerning what happened on the stairway might ordinarily be explained as a case of witnesses seeing and recalling matters differently. Two other possible explanations were that Dassy was exaggerating and over-dramatizing the situation, or that Casey was trying to play it down. In any event there was, according to the evidence of an independent witness — George Brown, a stu-

dent clergyman, whose evidence I accept without qualification – unnecessarily excessive use of force on the landing.

Whether there was “a run down the stairs” or a falling down the stairs by Courts, either deliberately precipitated or accidentally caused by Dassy, it would appear that the journey from 7 and 8 landing to the basement corridor was a continuation of the excitement on the landing.

Casey indicated that Courts was “near the wall” opposite the foot of the stairs when he (Casey) got hold of Courts’s arm. “When we got down there I grabbed one arm and it was – that would be Courts’s left arm, and Mr. Dassy grabbed the right, and Mr. Garrett was right behind us and we led him through the tunnel to the elevator.”

Casey denied Dassy’s “confession” that he (Dassy) had struck Courts again in the basement corridor. He also denied Dassy’s allegation that he (Casey) had struck Courts in the basement corridor. “I say it never happened. . . . I am not about to give you evidence, sir, to protect Mr. Dassy. If Mr. Dassy hit him, I am going to tell you, right.”

Again the question arose whether Dassy was exaggerating and dramatizing his evidence to support his allegations of brutality at the Toronto Jail.

Casey was questioned about the evidence of another witness:

MR. MCRAE. One of the other witnesses, Arnold States, testified that when you got I believe it was in the vicinity of the linen room in the new wing that you let go your hold momentarily and struck Courts between the shoulder blades. Did that happen?

A. No, not very likely, sir, not with Mr. Garrett standing there.

Q. It did not happen?

A. No, sir.

He further denied that either Dassy or he had hit Courts as they were coming along the corridor. He stated that they had him “in an armlock and we had his head down and we had quite a bit of pressure on his arm; and he did ask us, ‘Let me go’ at that time. He said, ‘Take it easy boys I have had enough, you know I will walk over now’, but we kept him in the armlock.”

Casey said that although Courts’s face was “leaning forward, it wasn’t really on the ground, but it was around there like that, and we did have a lot of pressure on him.”

Casey was unable to recollect seeing or having any conversation with States. He said that Courts was moved along in the corridor by their having “hold of his arms very tightly you see. And more or less pushing him than anything. . . . If you had arms up behind his back and his head was down, that would be enough pressure on him to make him move if he didn’t want to, he would have to move or it would break his arms.”

What Casey was describing was a come-along hold. Of course this could be overdone and there could be an intent to inflict pain. The exact amount of force required to move an inmate with this hold is difficult to measure. This is why a senior officer should ensure that no more force is used than is necessary.

Mr. Carter brought out the fact that, when Courts was being escorted to segregation by Dassy and Casey, C.O. 6 Stewart Garrett was with them.

Casey was asked what he would expect to happen if he kicked or struck an inmate in the presence of a senior officer such as Garrett, to which he answered: "I would expect to be, in our terms, 'wrote up', and I would expect there would be a report put in against me. I would probably be in front of the Superintendent and possibly lose my job over it, sir."

I hope Casey's answer was correct, for it would otherwise signify that senior staff were parties to assaults on inmates, and would indicate a rather severe sickness in the correctional hierarchy at the Toronto Jail. That is not to say that there were not, at times, suggestions of senior staff looking the other way in situations where an inmate might have "deserved" some punishment for an attack on a correctional officer or on another inmate.

In the absence of any independent evidence, one is left with the evidence of States as to what occurred in the corridor outside the laundry room, as against the denials by Casey. There was also a duty incumbent upon Garrett to ensure that there was no such attack while he was in charge of the escort.

States was not the most satisfactory of witnesses. Courts may well have been moved along the corridor towards the elevator in a rather aggressive manner by Casey and Dassy, but I am not convinced, on the evidence, that Courts was physically beaten by Casey or Dassy while being moved along the corridor and in the presence of Garrett. Although I find that there was excessive use of force against Courts on the landing as well as at the foot of the stairs by Dassy and possibly by both Dassy and Casey, this could be explained (but not justified) by the heat of the moment and the attack on Peake.

There was, however, some break in time while Courts was being propelled along the corridor and particularly when he reached the laundry room area in front of the elevator and if there was any excessive use of force at this time not only was it unjustified, it would also have meant acquiescence on the part of a senior correctional officer.

MR. CARTER. All right. Now, is there any regulation concerning the application of violence in the way of punishment to an inmate, that is, is it allowed or is it not allowed?

A. I am not sure but I think you are allowed to use the minimum amount of force necessary to restrain an inmate.

Q. All right, but aside from that, if an inmate is acting up, is there a regulation permitting you to punish him on the spot by applying force to him?

A. No sir.

EVIDENCE OF JOHN MINARIK

This correctional officer gave his age as 44, height 5'9", and weight of 187 pounds. He held the rank of C.O. 2 and had been employed at the Toronto

Jail since 1965. Around 1957 he worked at the Kingston Penitentiary as a correctional officer for about a year. He said that he took a five-week in-training course at Guelph.

Between Minarik's stints with the federal and provincial ministries, he worked for the Metropolitan Toronto Police Department as a civilian employee.

Minarik said that he first noticed Courts with his back "to the screen mesh", being talked to by Peake.

He said that his own duties at the time were "helping with the runners".

Usually we have two men, and we have to bring down the inmates and put them in for the visit on the phone and bring them back up to the corridor and have a clothing change, etcetera. There was only two men in that big building and sometimes it gets tied up, so I usually help in there, handling the phones or handling the inmates. . . . I was really driving the jail van. Any time there is not any use of the van I fill in wherever I am needed in the jail.

He said he saw Courts strike Peake. He ran over and "grabbed the inmate. By then Mr. Peake and this inmate were struggling, standing up and I bumped into him and all three of us came down." Prior to the striking of Peake, Minarik stated, Peake was not punching or jabbing Courts. When he (Minarik) bumped into both of them and grabbed Courts, he said, "The main thing is to get him off his feet, but it didn't work that time."

He said he grabbed Courts "around the waist just like a football tackle, to try and bring him down". He (Minarik) went to the floor. Courts's feet came up, "his boots near my face". He said that he rolled away and "then several guards were around . . . by the time I got up on my feet the guards were all around".

EVIDENCE OF STEWART ARTHUR GARRETT

C.O. 6 Garrett was born in Northern Ireland. At the time of giving evidence he was almost 58. He was 5'10" in height and weighed 180 pounds. He had been employed for almost 24 years at the Toronto Jail. His was the senior correctional officer rank, next to the Assistant Superintendent. The only training course that he took was a two-week course at the Guelph Correctional Centre, approximately three years ago. He stated that he did shift work for 23 years but no longer does so, nor does he now work overtime.

Garrett recalled the incident involving Courts on July 26, 1974. At the time, he was in the Legal Aid office detailing the work to be done by inmates. He said the area is the busiest in the jail. "There's always a lot of noise around there. The radio was on . . . they're going and coming back and forth from the yard. All the time it's busy. You get so used to it. Just close your ears to a lot of it. It's a busy spot."

He stated that he heard scuffling outside, "hollering and shouting – just as if it was coming from the radio. You could hardly tell the difference. It's noisy." When he went over to the landing he saw Peake and noticed that blood was running down his chin. He also noticed Dassy and Casey with an inmate, heading down the stairs. "So I didn't take time to ask any questions, I just went down after them to see what was going on."

It would therefore appear that they were taking it upon themselves, without instructions from a senior officer, to escort Courts to segregation. The proper procedure would have been to summon a senior officer and allow him to make the decision as to segregation, or any alternative. Certainly there would be no problem in getting a senior officer at that time in view of the close proximity to the rotunda and the Chief's office.

Garrett said he followed right after them to find out what was going on, "about a couple of steps behind them". He said that Dassy had Courts in a headlock, Casey was below Dassy and Courts, but "the three of them was pretty well going down the stairs together". He said that Courts did not get shoved or pushed down the stairs, that he went down in a headlock. "He was going down fast." It was Garrett's opinion that Dassy did not release his hold on Courts and that "he took him all the way down to the bottom of the stairs".

He also said that nobody was pushing or hitting Courts in order to move him along as far as he could see. He denied the evidence of Courts that there were other correctional officers who went down the stairs. He also disagreed with Dassy's evidence that Dassy and Casey struck Courts.

MR. MCRAE. So that Mr. Dassy and Mr. Courts have both said that Courts was struck at the bottom of the stairs?

A. He wasn't, sir, he didn't have time to be struck, he was taken right around the corner and right to the elevator; and he didn't run up against the wall . . . I will swear to that.

Q. You are swearing to everything, sir.

A. He would have knocked his brains out if he had run up against that wall, it's a solid stone wall.

Q. Could you have been a little too far behind to see this?

A. Not a bit. I was right there, sir. I was right there. It's only a matter of three or four feet from the bottom of the stairs to the wall.

Q. This is what I am saying, is there any way it could have happened out of your view, so that Mr. Dassy or Mr. Courts made that up?

A. Well somebody is telling lies, sir. I don't know who it is, but I was there and I can see. I wear glasses, but I can still see good, yes sir.

Q. All right. So in any event, Mr. Dassy and Mr. Casey had ahold of Courts, did they, after they got to the bottom of the stairs?

A. After they got to the bottom of the stairs they still had ahold. Mr. Casey grabbed him by the left arm and away they went to the elevator.

Q. And Mr. Dassy had him by the right arm?

A. Yes, sir.

Q. And how were they marching him along?

A. He was walking along pretty swift.

Q. With his head down?

A. Bent over a bit, you know.

Q. Was he being punched or hit?

A. No, he was not. He was being half carried, he was tiptoeing along.

Q. Moving pretty fast?

A. Yes, sir."

Garrett, like Casey, also denied seeing States while Courts was being taken towards the elevator. It may be that the reason for this is that States was more in the laundry room than the corridor. He said no other incident occurred until Courts was put into segregation. He allowed Courts to cool off for about 20 minutes and went back to speak to him. He said that Courts admitted striking Peake and the rest was left to the Superintendent's hearing.

Garrett said that "there is supposed to be a senior officer present when an inmate is being put in segregation".

He said that he did not notice any injuries to Courts. "He was loaded with something, whatever it was I could not say, some kind of drug. He was loaded. . . . He was just so stupid there, he did not even want to talk. He was just half asleep . . . [his eyes] they were just glassy, you know. He just opened them and that was all. Just ready to sleep, did not want anyone to bother him, just wanted to sleep."

It is difficult to reconcile the evidence of Garrett with that of Dassy, Courts, and States. Certainly, if the evidence of those three is correct, and there were physical assaults on Courts while he was being taken from the corridor to the elevator, Garrett was remiss in his duty as a senior officer in not putting an immediate stop to them.

Dassy's evidence appeared to be reliable and logical in its presentation on this point, and particularly with reference to his statement that Garrett repeatedly asked what was going on.

THE COMMISSIONER. . . . you kept inquiring as to what was happening – as to what was going on. Did you do that as they were going along?

A. I would imagine I did, sir. I wasn't getting any answers.

Q. Were they ignoring you?

A. No, they were just keeping on going to get the man where he was supposed to be located – get him there.

Q. What did you mean by "what is going on"?

A. Well, I could see Mr. Peake on the landing. I didn't know what sort of fight had been going on – one thing and another. and I didn't get time to talk to Mr. Peake; so I just saw the two of them taking this inmate down the stairs, so I went right down the stairs with them.

Q. Well then, going along the corridor Mr. Dassy had indicated that as you were going along you kept asking: What is going on? What is going on? You say that you may have been asking that question?

A. I probably was . . .

Q. Shouldn't they have stopped at that time, you being a senior officer – stopped at that time and told you what they were doing?

A. Sometimes if you stop with those fellows, sir, you get into more problems with them – keep on going.

Q. I'm talking about your correctional officers – shouldn't they have stopped

when you asked them what was going on, and told you what they were doing?

A. They really should have, but they didn't – they didn't.

I am not wholly satisfied that Garrett had the situation under control to the extent that a senior officer should have. If there were assaults on Courts in the basement passageway I would prefer to think that it was more a matter of a senior officer not having the situation under control than of his acquiescence in the assaults after he had seen the blood on Peake's chin and concluded that there had been an attack on a correctional officer. Having said this, I prefer this finding to that of branding a senior correctional officer with long service as being a party, even by silence, to an assault. Particularly so in view of his denial, which was supported by the evidence of Casey.

Against this, there is the evidence of Dassy, a disgruntled ex-employee, and two inmates. Nevertheless the suspicion is there. A finding that Garrett did not exercise proper control on his correctional officers, if this was the case, is sufficient criticism.

Garrett is also the correctional officer who is alleged to have used the condemned segregation cells in the old section of the jail for "temporary disciplining" rather than laying charges – which earned for those cells the soubriquet of "Garrett's Hotel".

Mr. Bryant, in his examination of Garrett, brought out the point that the Misconduct Report, signed by Garrett as the investigating officer, did not contain any notation that Courts was under the influence of drugs. Certainly this was a matter that the Superintendent, or his deputy, deciding on the disposition of the charge, should have before him for consideration, and in this respect the report was not as complete as it should have been.

It is suggested that in any future reports the condition of a charged inmate should be set out where it is not normal. It should be indicated whether the cause is drugs or something else.

MR. CARTER. Can you tell me what action you would take if you saw an inmate being struck by a correctional officer in the manner that Mr. McRae read to you this morning?

A. Yes, sir. I would get the officer that struck him and I would tell him that I am going to write him up and he would be in front of the Superintendent.

That is what would happen.

Q. When you write him up, what does that mean?

A. File a report, write a report out, sir.

Q. All right. Then for what purpose is he before the Superintendent?

A. For abusing an inmate.

Q. Did you have occasion to write up any of the officers involved here?

A. I never had to do that, sir.

THE COMMISSIONER. Have you written up any officers for that type of offence?

A. Not that type of offence, sir, but lots of other types.

Q. With reference to using force on an inmate?

A. No, sir, I never had to do that.

Q. Can you tell us why you have not written up an officer for using force on an inmate?

A. Because it is never used except when a man is taken to segregation. If he doesn't want to go, he just has to go. There is no kicking or fight or anything like that. It is just if he doesn't want to walk he has to be taken along, that is all.

EVIDENCE OF ALEXANDER SILLS

This correctional officer was born in Guyana. He was 30 at the time of giving evidence, had served with the Ministry of Correctional Services since April 1, 1974, and held the rank of C.O. 1. He gave his weight as 175 pounds and his height as 5'10".

He stated that he completed a three-week training course at Guelph and also took the correspondence course. When he first came to Toronto in 1972 he worked as a security guard for a commercial security service.

His first knowledge of the Courts incident was seeing a scuffle. He stated that Casey, Dassy, and Peake were there, but he did not recollect seeing Evers and Minarik. When Sills arrived, Courts was on his feet. "He was what you might be considered out of sorts. He was really wild . . . he was — what it might be considered someone who lost most of his faculties. I don't know what his condition was, but these officers were a fair size, and it took quite a bit of doing to get him under restraint . . . we tried the usual method of [trying] to get his hands and feet under control to restrain him with a minimum amount of restraining measures. I tried to get hold of his hands or something. I assisted in some way."

He did not recall seeing Courts on the floor at any time, so that his arrival may have been after Courts had regained his feet. He was there when Garrett arrived, at which time he said Courts was subdued but had to be kept in an armlock, which he described as "one of the holds that we could use legally". He also saw Courts being held in a headlock, although his evidence was not clear as to whether there were, in fact, two different holds on Courts.

"Once he was reasonably subdued they were ordered by Mr. Garrett to take him over to the B landing. I left the incident."

In answer to a direct question as to whether he heard Garrett order Casey and Dassy to take Courts to B landing, he stated, "Yes, sir" and he said that this is when he left. This does not agree with the other evidence, that Garrett arrived as they were proceeding down the stairs, nor does it conform to Garrett's evidence and that of Dassy that Garrett was inquiring what was taking place and therefore could not have ordered Courts into segregation prior to going down the stairs.

It must be borne in mind that Sills gave evidence approximately half a year after the event and this may be why his evidence is not in accord, on this point, with that of Garrett and Dassy.

EVIDENCE OF GEORGE RUSSELL THOMPSON

Dassy had also indicated that C.O. 1 Thompson was present and had hold of one of Courts's arms during the incident. Thompson was born in Ontario and at the time of giving evidence was 22 years of age.

He said he was not present at the Courts incident. His first knowledge of it was when he saw Peake writing his report in the tearoom. When questioned why he might have been mentioned by Dassy as being involved, his reply was, "Him and I didn't see eye to eye most of the time."

MR. BRYANT. This is with respect to situations that arose while you were both on duty. Is that right?

THE WITNESS. Yes – off duty as well. . . . We started at the Institution at the same time . . . he lived in my direction . . . so I would pick him up, and take him to work – back and forth to work. We made an arrangement. He didn't keep it up, so . . . we looked in the opposite direction when we passed each other.

I do not think that Dassy was attempting to mislead by mentioning Thompson's presence. Thompson was not alleged by Dassy to have played any significant part in the incident and Dassy must have had Thompson confused with another correctional officer. Mr. Carter produced documentation showing that Thompson was assigned elsewhere in the jail at the time in question.

EVIDENCE OF PAUL JOSEPH MULHERN

Mr. Mulhern became Deputy Superintendent of the Toronto Jail on January 1, 1975. He had been Assistant Superintendent. As of January 28, 1975, there were two Deputy Superintendents and one Assistant Superintendent.

Mr. Mulhern recalled conducting a misconduct hearing on Courts and said he saw him on July 27 at 12:05 p.m. This was a Saturday and he was the senior ranking officer in the jail. He stated: "As I recall, that morning going over the morning reports the matter of Mr. Courts came before me in the form of a misconduct charge which I read over, and I also read over the reports submitted by the investigative officer, I believe it was Mr. Garrett."

He said that he interviewed Courts in the segregation area.

A. I confronted Mr. Courts with the gist of the charge; that is to say, with respect to striking an officer and using obscenities in his presence. . . . Again, to the best of my recollection, Mr. Courts's summary of the event was that he

asked the officer for a meal; the officer told him that there wasn't any meals; Mr. Courts became very upset and told the officer to [deletion] . . . and then proceeded to use other obscenities to the officer, whereupon he was called from the corridor —

MR. MCRAE. Now is this what Courts told you?

A. That is correct.

Q. Right.

A. — taken from the corridor by the officer in charge of that corridor . . . I believe that is Mr. Peake. Let me see. Just in fairness to Mr. Courts, he said, "We had words but I didn't physically attack him. . . . However, I did swear at him. I did get upset. We did exchange some words, some heated conversation." He then said . . . something [to the effect that his] actions were defensive. I asked him to explain that and he said . . . "It was my opinion, having called the officer the names that I did call him, that it would follow that I would deservedly get something for it and I just beat him to the punch. I gave him an old" — I think he used the word "sucker shot"; that is street jargon for meeting by surprise or getting an officer off guard. I think that was pretty well it, and I found him guilty based on his admission and sentenced him to an indefinite term of close confinement on a special diet. That was the extent of our conversation at that time, Mr. Commissioner.

Mr. Mulhern then filled out parts 3 and 4 of the Misconduct Report. He stated that Courts was given a chance to talk, as was borne out by part 3 of the report, and therefore Courts's statement at the hearing that he was not given a chance to talk and complain of treatment by the correctional officers was incorrect.

Mr. Mulhern was asked if he had seen any injury to Courts at the time, to which he replied:

A. No . . . he certainly didn't make any allegations against any officer with respect to a beating.

THE COMMISSIONER. Well, is there a tendency on the part of inmates to be silent about any allegations in order not to aggravate their position and to try that way to leave segregation earlier?

A. I would say that there are cases that would take advantage of that thought, Mr. Commissioner.

Mr. Mulhern said that had he seen evidence of injury at that time he would have taken immediate action. Courts's face, neck and arms were visible. He did not see his back or the part of him that was covered by the segregation gown.

With reference to the Misconduct Report, Mr. Mulhern said that it was incompletely made out in that there were, in fact, two charges that he dealt with; one for attacking an officer and another for using obscenities.

Mr. Mulhern indicated that the matter was handled, in his opinion, in the proper way. He stated that Peake "acted in a responsible, positive manner". Mr. Mulhern considered the matter to be one of judgment. "Perhaps the situation in Mr. Peake's eyes didn't demand the presence of a senior officer,

whereas in some of the evidence that has come out, if it is true, a senior officer should have been called. However, I am not in a position to really judge."

While giving evidence, Mr. Mulhern expressed his opinion as to approved procedures and the practicality of adopting them under varying circumstances.

THE COMMISSIONER. Then, viewing the Courts situation in retrospect, if Courts had a complaint about not receiving his food, and apparently there was an explanation and a proper explanation for it, he was sleeping at the time when it was delivered, if he had that complaint, and he was abusive at that time, in addition one could have discerned he was influenced or was under the influence of drugs. Then, what should have been done?

A. The officer took the proper initial action.

Q. To bring him out?

A. Getting him out of the area. You see, he was being belligerent, obscene. God knows how many other people who are in that particular corridor may have been in the same condition. . . . Well, the officer at that time, sir, he had to take the initial action. You see, different personalities would react to that particular flare-up and it has often happened, and I know personally, and it is the old story. . . . You are telling the inmate to come out of a particular area. An order. If the inmate responds, then that is half the battle. You have got him out and away from possibly infecting the rest of the corridor. In many cases . . . there will be an inmate at the end of the corridor and you will call out John Smith, for example, to come out – "Come out, I want to see you." "You want to see me? You can come in and get me." Now, there is 17 or 26 or whatever inmates in this corridor watching the response. It is at that point, of course, where a senior officer is needed. It is demanded he be on the scene. Some of our officers, and myself . . . can possibly relate to a group of inmates better than the others do, so if I had three or four senior officers on that particular day, and I find out where the situation is, and this type of thing existed, I would be inclined to have that senior officer who is probably more familiar with the area in question, then I would send him [if] possible to get that man to come out with as little trouble as possible. . . . The officer acted in a responsible, positive manner in that this inmate was belligerent and unpredictable. The inmate should be taken away from a potentially dangerous situation.

Q. All right. He brings him out. Is it not something that one might anticipate once this inmate is out and you are face to face with the correctional officer, that he might cause problems or trouble?

A. I have to revert back to the word unpredictable – you can't really tell.

Q. There is a risk?

A. There is always a risk.

Q. How should it be handled?

A. I would think – I would like the officers to be able to exercise their initiative instead of calling on the senior officers all the time for every little matter that comes up with the inmates. That is to say, the relationship the officers have and the inmates. However, it is a matter of judgment. Perhaps

the situation in Mr. Peake's eyes didn't demand the presence of a senior officer and whereas in some of the evidence that has come out, if it is true, a senior officer should have been called. However, I am not in a position to really judge.

Q. I can understand.

A. There isn't always a senior officer available.

Q. I can understand why the correctional officers should have the latitude. They have to have some initiative.

A. Also, it is his career and we are looking for this kind of person all the time.

Q. And I would think it would also undermine his relationship with the inmates if every time there was some confrontation and he had to call the senior officer. I can understand why that would not be desirable.

A. Especially in any type of setting he is working in.

Q. But I thought with your experience and the objective way in which you have approached this problem possibly there is some other way in which this matter might have been handled so it would not become explosive?

A. I think the officer acted in good faith and I think his judgment, from what I have heard, was proven.

Q. I am not indicating bad faith on the part of the correctional officer or on the part of any of them, but I was wondering how the situation initially might have been prevented and then I was going to ask you about once it had become controlled, as was given by evidence, whether it was necessary for anyone else to have stepped in to the extent that we have heard from evidence that there was additional force used?

A. Well, taking the inmate into consideration, and in fairness to yourself, Mr. Commissioner, you must appreciate the fact that, when a situation has become explosive, the more people that are present the less likelihood that it is to grow in intensity. I think, in fact I firmly believe, that the presence of personnel in great numbers prevents injury to any single or even two correctional officers as well as, in my estimation, prevents injury to the inmates. I feel that the presence itself has a tendency, if the inmate of course is aware of that presence, if he is able to comprehend the presence of personnel, he is going to think twice before he intensifies his attacks on an officer or intensifies any situation that could become explosive.

Q. Yes, but here we had evidence that Mr. Casey was holding this inmate down. I suppose two arms and two legs, if there were four correctional officers, that might control the situation. might it not?

A. That would certainly control the situation. I am certainly sure I would not be getting up if Mr. Casey were sitting on me. What rather concerns me, if we can refer to that same testimony, Mr. Commissioner, is the fact that I have heard that this particular inmate was kicked three or four times. I think he himself went up to six, in the face, was thrown down a step of cement stairs, and I would venture to guess that that would be something like 30 feet from the top to the bottom. I rather think that if all of that occurred, plus the other little bits I have heard thrown in there, I probably would not have seen Mr. Courts on a charge in segregation; I would have seen him at an outside community hospital.

Q. Well, it may well be that the truth lies somewhere short of the aggregate of

all these observations that are alleged to have been made, but there was evidence given by apparently independent witnesses that there was kicking after Courts had been subdued. This is what —

A. I find that difficult to believe, sir.

Q. Then one has to say that the evidence of the independent witnesses should not be accepted. So here we have a situation in connection with this inquiry where for the most part the witnesses are either inmates or correctional officers. There may be motivation in connection with witnesses that have an interest, one way or the other, so that we have not had the opportunity to have too many independent witnesses, but there was a young chaplain, Mr. Brown, and there was a probation officer, Mrs. Taylor, who gave evidence. Now, there's always an explanation that their powers of recollection or their ability to observe on any of these matters might not be the most accurate, but certainly from the point of view of being independent witnesses, they have that to commend them initially.

A. Mr. Commissioner, I believe that Superintendent Whitehead described the Frost incident as going into his cell and seeing a man who looked much like a raccoon. I venture to say if Mr. Courts was kicked in the face seven times, I would have had to make a similar observation. At least something about his face would have looked like that, if he were kicked in the face six or seven times.

Q. Suppose he is under control and is kicked once, and is not kicked in the face?

A. I am not trying to illustrate any justification for kicking at any time, sir, other than the fact that I think I would also have to say that if I were trying to restrain someone of great size and I felt that the only weapon left to me was to bring this man to the ground as quickly as possible because my very life depended upon it, I don't think I would be too concerned about whether my hands or my feet were going into those [parts] of the body that would effect that purpose.

EVIDENCE OF GEORGE GRAHAM BROWN

Independent witness George Graham Brown, aged 26, was born in Toronto, graduated from York Mills Collegiate, and attended the University of Toronto, obtaining a degree in psychology. He then enrolled in a program in pastoral education, training for the chaplaincy. In this connection he worked at the Toronto General Hospital for nine months and then at the Toronto Jail as assistant student chaplain, starting in May 1974.

At the time of the Courts occurrence Mr. Brown had been working at the Toronto Jail for approximately 12 weeks. When he gave evidence he was enrolled at the Divinity School at Yale University in a course leading to a Master of Divinity degree. Prior to the occurrence he had not spoken to or seen Courts, nor did he see him after the occurrence.

He recalled that the day of the week was Friday. The chaplain, Father

Ernest Callahan, was to commence his holidays that day. Brown said that at the time of the incident he was standing in front of the chapel entrance, which would be on the mezzanine, or balcony, of the rotunda. He was able to see the entranceway, or landing, at Corridors 7 and 8 but not the corridors themselves. He said that his attention was attracted by some noise — either a shout or scuffle.

He then “looked down in the direction of the noise and there were a number of guards, four, possibly five, subduing Courts. There were people holding his arms to his sides and sort of forcing him down to the ground really. That is what happened thereafter. There was a kind of a tangle of bodies but anyway Mr. Courts was down on the ground. He looked like he was face down, as I recall.”

MR. MCRAE. Face down, flat on the floor?

A. Yes, a couple of guards were subduing his arms and his head and his legs. At that point someone came from the right or was there and aimed a couple of kicks in the direction of his head, it seemed to me, and at that point —

Q. Go ahead.

A. At that point he, Mr. Courts, was brought by the guard to his feet. He was still being subdued and then someone else was there, I don't know which correctional officer it was, someone hit Mr. Courts across the side of the head with an open palm, a fairly stiff blow it seemed to me at the time. Then Mr. Courts was taken by these guards around to the stairway and he was escorted down the stairway.

Q. So to recapitulate briefly the first thing you saw was more than one correctional officer holding Courts and forcing him down to the floor?

A. Well, yes. They held him. They were subduing him when I turned, and put him down, forced him down to the floor.

Q. So now we have Courts lying on the floor. How many correctional officers were holding him or subduing him?

A. I cannot say exactly, it seemed like four or possibly five.

Q. Was Courts struggling at that point?

A. If he was struggling, he was not making much headway. I imagine any struggle did not have any effect. He did not appear to be moving. He was not breaking the hold of the guards or anything like that. He was quite clearly subdued.

Q. Have you been able to identify any of the guards that were holding him?

A. I was not able to identify clearly any of the guards that were holding him.

Q. But you were able to tell us a couple of the guards who were in the vicinity?

A. Yes.

Mr. Brown identified those in the area as Dassy, Peake, and Casey. Continuing, he said:

A. I cannot describe anything that Mr. Casey did. I don't really recall whether he was actually subduing Mr. Courts or whether he was standing there watching. There were a number of people who were not actually involved, a number of correctional officers who were usually in that area anyway and just

observed the scene.

Q. Can you describe anything that Mr. Peake did, specifically?

A. No, I don't recall Mr. Peake really doing anything specific.

Q. But you can say definitely that he was there?

A. Yes. As I recall, Mr. Peake was one of the guards helping to subdue Mr. Courts. Whether he was holding an arm or whether he was holding a leg, I can't recall.

Q. You have told the Commissioner that, while Mr. Courts was facing down on the floor, someone came and made some blows in the direction of his face or neck. Can you tell us who did that?

A. Yes, it was Mr. Dassy. He was either there or came from the right side and aimed two or three kicks in the direction of Mr. Courts's head.

Q. Can you say if the kicks landed or not?

A. No, it was too difficult for me to tell. I don't recall if they landed or not.

Q. Was there any need for Mr. Dassy or any other person to kick Courts at that point as far as you were able to observe?

A. I did not observe any need for that. Mr. Courts was subdued at that point.

As for the slap in the face, Mr. Brown said:

A. Well, it's intricate, I guess. It was not like a karate chop or anything like that. It came like that [indicating]. My impression was that it was a stiff blow. I heard it and it seemed like whoever it was that had struck Mr. Courts used the palm of his hand, not his fingers.

THE COMMISSIONER. Who was that, do you know?

A. I don't recall, sir.

Q. Was there any need, as far as you were able to observe, to strike Mr. Courts in that fashion?

A. As far as I was concerned in order to subdue Mr. Courts that was not necessary.

Mr. Brown said that shortly thereafter he saw Peake with what appeared to be a fresh cut on his forehead. After speaking to three inmates in the general area and obtaining negative information from them as to events leading up to what he observed, Brown then went looking for Father Callahan, as he was "fairly disturbed actually by the whole thing. Kind of upset, I had some strong feelings about it at the time."

He was unable to locate Father Callahan. He inquired of Carol Eldridge, the social worker, whether some other minister might be in the jail and told her about the incident.

A. Well, I told her what I had seen. As I said here today, I guess basically. I told her it was very upsetting to me, and I was not quite sure what to do about it, it was the first sort of incident like that that I had ever really seen. I guess, that I was, you know, sort of angry about it and well – kind of bewildered to know what to do, so I probably asked her what I might do: and you know this conversation went on back and forth. She expressed some surprise, and didn't particularly like to hear about incidents like that either. She did suggest

to me that I, you know, that I might write out an official report, or make a complaint. There are sort of channels for that, and submit it to Mr. Taylor [the then Superintendent]. . . .

MR. MCRAE. Did you discuss that with her, she suggested you do that?

A. Yes, she suggested that was a possibility. She said, if you want to do that you can do it.

Q. And did she give you any other possibilities that you could pursue?

A. I don't really recall that. I think I expressed I wanted to talk to Father Callahan about it when he came back. I didn't know at what point I reached the decision not to file a report, but I finally did reach that decision. Whether it was that day, or Monday, I don't know.

Q. Did you reach the decision not to file a report of your own initiative, or as a result of what you were told by someone else? Basically why did you not file a report?

A. Well, I reached the decision basically on my own. It really didn't strike me that it was going to do much good. For me as a summer student to make that kind of complaint or report. It struck me that it wouldn't go anywhere. And that there is the drawback of not having seen any kind of provocation. I was not a witness to that. So on the basis of those facts I decided that what I would do at least is wait until Father Callahan came back. And it was that week during which Father was away that I became more and more sure that I would not in fact make a report. . . .

Q. You also said "I didn't think it was suitable for me there as a summer student" or something like that?

A. Yes. I felt, like, that as a person just there for that short length of time and being somewhat on the periphery of the whole kind of situation there that somehow it just was not kind of appropriate for me to make that report. It sounds a bit odd, I suppose. . . . Well, I was employed by the Department. And I was sort of coming into the jail for a short period of time. And I wasn't aware of what the jail was like, you know. I was going to leave again and couldn't follow up any kind of an incident like that. I was not involved in any history of incidents like that. I didn't know the guards very well. And I guess it was that kind of thing. It just made me feel like it perhaps wasn't the right thing to do at that point.

THE COMMISSIONER. Did you feel that because of your junior position there that it might be presumptuous of you to make a written report on that? Was that the effect of it?

A. Well, I guess, Mr. Commissioner, that might be one way of putting it, I guess. It was kind of presumptuous in a way. I guess in a way I was kind of afraid of putting in a report. I wasn't sure what would come of it. I wasn't sure what would happen to my situation there. I had to live there for five more weeks; and I was a little afraid about it. So I waited to see Father Callahan. And I think by the time I did talk to Father I was pretty well sure I was not going to do anything. . . .

THE COMMISSIONER. You mentioned that you were upset and disturbed and had strong feelings. Would you explain that a little more, please?

A. Well, the incident seemed to be — there was a number of people holding Mr. Courts and confining him; and in one way that is kind of reasonable if Mr.

Courts was being belligerent. But in another way – there is the two violent aspects . . . the kicking and the hand on the head; and that it just seemed totally unwarranted to me. . . .

Q. You felt it was not justified, I take it from what you said?

A. Well, I don't think it was justified anyway.

After Father Callahan had returned, Mr. Brown related the incident to him.

A. We talked about it and I told him I was upset about it and was not sure what to do and I told him I did not think I was going to file a report or anything about it. I don't recall reaching a mutual decision about that with him. I'm not sure that I asked him about it, whether I asked his advice as to whether I should file a report or not. I can't really recall what he said about that.

THE COMMISSIONER. Did he indicate that he had ever heard of such type of incidents before?

A. Well, I can't recall any words that Father spoke about that, but either at that time or before, at other times, Father had heard of incidents like that, similar kinds of things, that was my impression, as I recall.

EVIDENCE OF CAROL ELDRIDGE

Miss Eldridge was a graduate of the University of New Brunswick and had a master's degree in applied criminology from the University of Ottawa. She began her employment with the Ministry of Correctional Services in May 1973 and had been employed at the Toronto Jail from November 1973 to December 1975.

Along with some other social workers, she left to join the office of the Ombudsman, where among other advantages there was higher pay.

Miss Eldridge detailed her duties: "I interview any inmates who request to see me, male or female, regarding personal problems which includes a variety of things."

She had no personal knowledge of the Courts incident and her information about it had come from Brown. "He was very upset and did not know what to do and he came to me to see what I would suggest that he do and we talked on that basis."

Miss Eldridge said that during the discussion Brown considered what his position would be if he filed a report and it was thought that he might receive less co-operation from the staff if he were to take this action. Miss Eldridge said that, up to the time of giving evidence on January 23, 1975, she had not viewed any violence in the jail. On a subsequent occasion she had reported an incident that occurred at a later date.

She said, however, that inmates sometimes complained to her: "I have

had inmates saying they are beaten up, or they got hurt. If you ask for more you don't get much more information.

EVIDENCE OF ERNEST PAUL CALLAHAN

Father Callahan, a Roman Catholic priest, was ordained in 1964 and commenced employment with the Ministry of Correctional Services in 1968. He worked as a chaplain at the Toronto Jail.

I was greatly impressed with the dedication of this witness. I am sure that many times it must have been both frustrating and depressing for a man of his sensitivity to spend seven years seeing other men caged and particularly to see many of the same ones, unable to cope with society, return to jail time and again.

Father Callahan was employed and paid by the Ministry and at the time of giving evidence, January 23, 1975, had spent most of his career in and around the Toronto Jail. Towards the end of the inquiry it was indicated to me that another clergyman had taken over his duties. Father Callahan described these duties as being "to co-ordinate the services of other denominations that do not have a member on the staff, and counselling, interviewing and, much like Miss Eldridge, phone calls, messages, what-have-you".

In addition, he did spiritual counselling, but "not very much".

Father Callahan estimated that some 10 to 12 inmates would see him, on an average, per day. As his interviews were "a little more confidential" than Miss Eldridge's, they "tended to be longer". Graham Brown was placed under Father Callahan's supervision in 1974 and when Father Callahan returned from a week's vacation, and before Brown spoke to him, he heard from a couple of inmates that Courts had "got it". "I was going through the tunnel from the old building to the new building, and there was a lot of inmate movement down there. I usually stop and talk to half a dozen on the way through.

MR. MCRAE. Would you repeat for the Commissioner exactly what you were told by these inmates?

A. I couldn't repeat the exact words, just that Courts had — I think the words used was "filled in".

Q. Courts had been filled in?

A. Something to that effect. I can't guarantee the words.

THE COMMISSIONER. Were these inmates that spoke to you together at the time?

A. Yes, I believe they were.

Q. Did they tell you who they had been filled in by, whether it was the guards or —

A. Yes, they mentioned that guards had been involved and the incident was a week old by this time. Then Graham, Mr. Brown, came to my office a little later on that morning and he was visibly upset by this incident and he asked me what should be done. I think at that time I outlined the same possibilities that Carol did and since I had not been there to witness it, I could not send in a report but I told him he was free so to do.

Q. Did you advise him for or against submitting a report?

A. Again, it was more of a talk, and I don't believe I counselled him either one way or the other. He had seen it and he felt obviously quite strongly about it and at that point I think I probably mentioned, "Well, you could file a report."

Father Callahan said that the expression "filled in" was institutional slang "which means to be beaten".

EVIDENCE OF DONALD JOHN BELLEHUMEUR

Courts's solicitor, Mr. Bellehumeur, I found to be a reliable witness, but his evidence was not of much assistance. He stated that he had known Courts as a client for approximately two years. As of July 1974 there were five charges outstanding against Courts. These were driving offences, and Mr. Bellehumeur said he was acting under a Legal Aid certificate. He recalled visiting Courts at the Toronto Jail. "It could very well have been the 28th of July, but I can't say with any precision . . . he had a facial injury of some type. To the best of my recollection, it was a black eye. That is the extent – that is the best recollection I have of any injury to Mr. Courts. . . . The incident was regarding a scuffle with the guard . . . it was not a complaint. . . . I searched all my files and I made no note of the incident."

EVIDENCE OF COURTS'S GIRL FRIEND

Reverting to the Courts incident, Courts's girlfriend at the time of the incident, whose identity I do not see any purpose in mentioning in this report, gave evidence. She was 18 years of age and stated that she visited Courts regularly during the summer of 1974 while he was in the Toronto Jail.

She stated that she saw Courts on July 26 when he was in the Old City Hall courtroom. She was about 12 feet away, and there was no sign of injury at that time, and although she did not talk to him it was indicated that there was nothing "unnatural about his condition".

With reference to sobriety, she agreed that on Saturday, July 27, at 10:00 a.m. she visited Courts at the Toronto Jail and she described his condition at that time, "Well, he was disheveled, his hair . . . wasn't brushed or anything.

He had scratches all over his neck, and his one eye was all puffed out, turning black. He was complaining of injuries lower ——”

MR. MCRAE. What do you mean by lower?

A. From the stomach down

Q. Do you mean in the groin?

A. Yes.

Q. What was his condition other than his injuries? Did you notice anything about his condition, his manner?

A. Yes, he was stoned. . . .

Q. Why do you say that?

A. Well, because I know him and he told me he was, and he was. . . .

Q. And he told you he was under the influence of drugs?

A. Yes, he told me he had done some after court the day before.

Q. He complained about the injury in the groin, and did he tell you anything else about injuries?

A. He said he had been put down on the floor and kicked, and that's about it.

Q. He told you he had been put on the floor and kicked?

A. Yes.

Q. Did he tell you by whom?

A. The guards.

Q. By the guards?

A. Yes, it was supposed to be over a hamburger.

The witness stated that Courts told her to phone his lawyer, Mr. Bellehumeur, which she did. She saw Courts again some time the following week, when he seemed “better”. She said that she told her parents about the alleged beating, but no one else. Her parents did nothing about it, nor did they suggest that she do anything.

The witness stated that on her visit to Courts on July 27 in the jail visiting rooms she could clearly see him through the dividing glass and spoke to him through the interconnecting telephone used for conversation back and forth. She stated he did not look “too happy” and she then tried to talk about other things to get his mind “away from it”. She said that the visit lasted about 20 minutes.

She indicated that when she would see Courts at the Old City Hall courthouse she would usually give someone \$5.00 to give to him so that he could buy lunch while in the cells, but that she did not do this on Friday, July 26, the day of the episode, and she thought this might be why he was hungry and “went after the hamburger”.

COURTS SUMMARY

The Courts incident is one that might have been defused had a senior officer been readily available, and called earlier. No doubt Peake thought that he

could handle the situation of Courts's rudeness, and in many such cases a lecture on the landing would probably have had the desired result, and the inmate would have been returned to the corridor without incident.

I do not think it beyond the realm of possibility that, after being insulted by Courts, Peake reacted quickly, called him out of the corridor, and may well have emphasized his remarks to him with jabs, as related by Dassy and Courts, and considering Courts's condition this may have been the spark that ignited the fire.

I am of the opinion that Courts did in fact attack Peake and that Peake and the correctional officers who came to his assistance were justified in using some force to control Courts. I find, however, that Courts was fully under control when Dassy attempted more than once to kick Courts. At least one of these kicks met its target, whether it was the inmate's face or body. Such action by Dassy was unjustified and constituted excessive use of force. In addition, I find that Dassy continued to use more force than was necessary in escorting Courts down the stairway and through the basement towards the segregation cells in the new building. There is some evidence to indicate that Casey may also have been guilty of excessive use of force during this journey.

The Courts episode is one in which there was an independent witness, George Graham Brown. In most cases, the Commission did not have the advantage of such evidence. Indeed, it appeared at times as if one were viewing old movies, where there were only "cowboys and Indians" or "cops and robbers". With reference to many of the allegations, the inmates were on one side and the correctional officers on the other. In those cases each side presented a solid phalanx and the twain never met.

With reference to the allegations of MacLean and States, which are reviewed next, it has not been thought necessary to provide separate summaries for them. Whatever comments seemed appropriate have been made within the narratives, which are relatively brief.

2. Brian Douglas Stewart Patrick MacLean

While being interviewed by the Commission investigators as to his knowledge of the Courts incident, MacLean advanced a complaint that he himself had been assaulted. He said it happened the week following the Courts episode. The log records indicate Friday, August 2, 1974. MacLean said it was the same day that a syringe was found in Corridor 1C during a morning inspection. MacLean said it was also on that date that he had attended court at the Old City Hall. While there, he had obtained four phenobarbital tablets, which he admitted to smuggling into the Toronto Jail in his mouth in some tinfoil.

I entered the search area and removed my clothing and placed it on the hook.

The officer who was searching me, I believe Mr. [C.O. 2 Murray] Todd, asked me if I liked to give the guards, in particular Mr. [C.O. 2 Clement] Harrison, a hard time, to which I replied no. While he was questioning me he was also searching me and in my mouth he found a tinfoil packet containing the four tablets of phenobarbital. . . . I removed my clothing and he was searching my clothing and myself. I then was asked to sign the register, which is normal procedure. I signed it. He found the tinfoil packet containing the four phenobarbital tablets and he called Corporal [C.O. 3 James B.] Brown . . . The guard, Mr. Todd, and several other officers who were in the vicinity, they moved in then and began to punch and kick me.

MacLean alleged that the correctional officers who were involved were Brown, Todd, and [C.O. 2 Gordon] Cameron. He said that Todd hit him in the stomach with his fists.

It was enough to knock me backwards a couple of steps and then I was knocked to the floor. . . . I was more engaged in blocking the blows than identifying the ones that were giving me the actual blows but I do remember those three particular guards because I did get a very good look at their faces and remember them punching and kicking me. . . . I was getting sort of a blow, it would be best described as a chop with the hand towards the neck, by Cameron and I recall being punched to the floor and then made to stand up and then punched to the floor again and then made to stand up. . . . There were some kicks too, but I can't identify the people who were doing the kicking.

He said there were "probably six or seven" correctional officers involved in the whole episode. "After the guards finished with their punches and kicks, I was thrown a set of Don Jail blues to put on. I was still nude at this time. I was marched out of the search area through the waiting room into the admitting and booking area. . . . I never made any assault whatsoever. I was merely trying to block the blows that were thrown at me."

Then he was placed in segregation. As to injury, "I had a pain in my abdominal region just below the solar plexus and to the left. It was a fairly sharp pain which I felt up until the time – I still feel it – up until the time I was sent to Mimico, some time later."

In segregation his "jail blues" were taken from him and, he alleged, he was again attacked by the correctional officers and was thrown into Cell 5, the one without a bed. He was left there without any clothing until later in the afternoon, when he was given "baby doll covering". The second attack in the segregation area was by "the same guards and I remember in particular Mr. Brown and Mr. Todd and Mr. Cameron".

MacLean said that "not too long after . . . maybe a period of two hours or so", his solicitor, John Hamilton, came to see him. "I complained to him about the beating and the pain that I felt and he just instructed me to keep out of trouble and he would see me in court on the 6th." He said that at the time his lawyer reached the jail he had no clothes on. He was then dressed in a suit of "blues" and taken into the visiting area to see his lawyer. MacLean said that in the afternoon he was interviewed by a senior officer and ad-

mitted to him that he had attempted to smuggle in phenobarbital tablets.

Trying to smuggle drugs into the jail is, of course, a serious matter as it can affect not only the inmate who is attempting to smuggle, but other inmates as well – affecting their behaviour and even the security of the jail. It is looked upon seriously by the jail authorities, and properly so. The offence is one that would justify segregation, but segregation in itself is a punishment, and physical force and assault should not be added to it as an extra deterrent or by way of teaching the inmate a lesson and showing other inmates an example.

Although MacLean stated that he “explained” to his lawyer, Mr. Hamilton, what had happened, he did not tell the senior officer conducting the misconduct inquiry anything “about the beating . . . because I felt that probably if I did not mention anything about it, it would be forgotten and I would be released from segregation”.

This appears to be another example of an inmate alleging assault but stating that he purposely did not make any complaint at the time.

MR. MCRAE. Well you not only did not tell him anything about it, but when he asked you if that was all that had happened you lied to him?

A. You could call it a lie, you could call it an omission of facts. I merely stated my own misconduct and did not report any undue treatment by the guards. . . . I am fairly certain it was Sunday he came in to see me and he said at the end of the interview that I would be released from segregation the following day.

Q. Monday?

A. Right. And the following day, Monday, I was in fact released from segregation and sent to No. 9 corridor which was being used for court cells.

Q. Did you ever ask to speak to Superintendent Taylor?

A. No. I didn't. I mentioned it to my lawyer and I felt that if anything was to be done about it he would know what avenues to take. I was not prepared to go making accusations or allegations without knowing how to go about doing it.

THE COMMISSIONER. You realize that if you had been assaulted in the manner that you have related, that that was contrary to the regulations of the Toronto Jail?

A. Yes, but I also realized that it was not an uncommon thing.

Q. Why do you say that?

A. Because of reports that I have heard from other people, and maybe just hearsay, the same thing happening to them. Now I felt that there would be no objection to my being released from segregation if it was known that I was not going to complain about this particular maltreatment and that is the reason I withheld it. I mentioned it to my lawyer. My main concern was that I had enough worries with my upcoming trial than to have to be spending my time in the segregation cell.

MacLean was asked if he had any pain other than to his side or any visible signs of injuries, to which he replied: “I am not sure, I had red marks, but I am not sure if there were any bruises on my back. A lot of the shots that I did take were basically in the kidney area and in front. There

were no visible bruises, but a lot of red marks on the front of my body, but I couldn't tell on the back of my body. . . . It lasted quite a while. I mentioned that to my lawyer, Mr. Hamilton. At first, I thought it might have been a rib. I remember mentioning that to him; and later, when I was sent to Mimico, I made the doctor aware of that complaint. . . . His treatment was to give me Divol tablets, and he said that he would treat me for symptoms of a hiatus hernia, which has the same symptoms as an ulcer, hence the Divol, and that if the pain continued, that he would send me out for X-rays at a later date."

He said that the pain continued for some time afterwards and about three or four weeks after his release from Mimico (October 7) he went to see his family physician Dr. Henry Mogadime. He said that he told Dr. Mogadime, when he saw him in early November, that he had been beaten "back in August".

He said that he was sent for X-rays by Dr. Mogadime, but at the time of giving evidence, January 21, 1975, he had not heard the results as he was again "incarcerated shortly after the X-rays were taken". The incarceration was again at the Toronto Jail.

On examination by Mr. Carter, he admitted that he had been placed on charge at the Toronto Jail in June 1974, as a result of a fight with two other inmates. He said that his injuries at that time were a broken toe and a cut lip, but that he had no chest or stomach injuries.

In his evidence on January 21, 1975, MacLean indicated that he was still experiencing pain, that he was not receiving any treatment at the Toronto Jail, and that he had "a very difficult time even seeing the doctor".

MacLean said he had continually asked to see a doctor about the problems already mentioned and about his medication. He had also made several complaints to the administration about his failure to get satisfaction. He said that since the end of November he had made about 15 requests to see a doctor.

Medical records were obtained from the jail showing that MacLean had been medically examined 14 times between November 30 and January 22, and that he was seen by a nurse about medication on three other occasions.

While giving evidence before the Commission, MacLean continued to insist that he had not received adequate medical attention at the Toronto Jail. In view of this, and after conferring with all counsel, there was the following dialogue:

THE COMMISSIONER. I want to see that your medical problem is clarified; and I have suggested to counsel, and they have agreed with me, that it might be advisable if you were re-examined by two doctors. By Dr. Mogadime, your family doctor, and Dr. Dubelsten, the doctor at the Toronto Jail. Would you be agreeable to that examination?

A. Yes, I would.

Q. And then they can let me have the report and we can find out about the items that you have mentioned, and what can be done for you in that regard; and what should be done for you.

As a result of this decision, MacLean's doctor, Dr. Henry Mogadime,

visited the jail where he met Dr. Dubelsten, and together they had a consultation with MacLean, drawing up a list of MacLean's complaints. The next day, January 29, 1975, MacLean was brought to Dr. Mogadime's office and examined with reference to the complaints.

On January 30 MacLean reappeared at the inquiry and Mr. McRae produced a copy of Dr. Mogadime's report on MacLean. In his report, Dr. Mogadime described the examination in detail and concluded: "After examining the patient and checking the jail medical record, I would have done nothing different for the patient than was done by the jail staff."

I accept the statements contained in Dr. Mogadime's report as being an independent assessment of MacLean's physical condition and of the adequacy of the treatment he received at the Toronto Jail.

MacLean's solicitor, Mr. Hamilton, in giving evidence could not recall seeing any marks or injury to his client.

Correctional officers Brown, Todd, and Cameron all denied the use of force on MacLean. Indeed, their evidence was to the effect that when caught with the contraband MacLean showed no hostility and gave no trouble and that therefore there was no necessity for force to be used.

In view of MacLean's personal physician failing to corroborate MacLean's complaints as having any causal connection with the alleged assault, the unsupported evidence of MacLean, and the strong denials by the officers named, I find that the allegation of assault has not been made out in this case.

From all the evidence submitted in his case, MacLean might be classified as a chronic complainer. This may have been in part a result of bad nerves and the use of drugs.

On the other side of the ledger, MacLean was candid in his appreciation of the efforts of one of the senior officers, C.O. 5 Vassos Zodiates, with reference to another episode which he said occurred on July 26 while he was in Corridor 1C.

At that time he complained to C.O. 2 Robert Simpson and C.O. 2 Clement Harrison about the return of his slippers. "I had a broken toe and these slippers had been issued by the doctor." He had injected several Tuinolns prior to that and in the ensuing argument about the slippers, with Simpson and Harrison, he and the two correctional officers "lost our tempers . . . I couldn't say whether it was the result of the drugs so much, but I am sure they played a role. . . . At any rate, I was coaxed into leaving the corridor, which I refused to do . . . I was asked to come out to the corridor and to talk about it, which I refused to do. Mr. Zodiates came down and for some reason or other he seemed to be very knowledgeable of the circumstances. I think he realized that I in fact was high on something . . . and there were no charges for misconduct laid at that time. Mr. Zodiates told me to go to bed and go to sleep, and he said he would talk to me the next day: and he never did talk to me the next day.

Q. He had the effect of cooling the situation out.

A. Right.

Q. You don't criticize him for that?

A. No, definitely not.

This was one of the examples that came to the fore from time to time during the Commission's hearings of an experienced and understanding senior officer being able to control a situation.

On another occasion, MacLean had a further complaint. As he stated it:

"I asked to see Captain Garrett and I was taken into Captain Garrett's office, which is right across number 8 corridor. . . . At that time I spoke to Captain Garrett and told him that I was very upset about the fact that my personal possessions had been searched and that certain articles had been removed and he went about returning my hair comb."

This episode indicates the importance inmates attach to their personal possessions. Other evidence came out during the inquiry of inmates being disturbed when their possessions were not intact.

3. Arnold Charles States

In addition to claiming that he witnessed an assault on Courts by correctional officers Dassy and Casey, States alleged that he himself was assaulted by these two officers. He placed the occasion as being early in June 1974. A segregation log showed him to have been placed in segregation by Dassy and Casey on July 8, 1974. States said this was the only time he was in segregation in 1974. The July 8 date therefore must have been the relevant one.

States related that he was sitting in his corridor when Casey ordered another officer to unlock the grille door.

"Mr. Casey said, 'Oh, you are still causing trouble, are you?' I said, 'I'm not.' Then Mr. Dassy spoke up: 'We got this nigger now. We got the one that has been causing all the trouble. Take him to the hole.' So as soon as I got to the steps they give me a push. I stumbled. I didn't fall. I just lost my balance. I didn't fall on the floor, I just stumbled."

The stairs he was referring to were those leading from Corridors 9 and 10 on the second floor of the old building to Corridors 7 and 8 on the main floor. He stated that it was Dassy who pushed him, or caused him to stumble. "And when I got down to the bottom at 7 and 8 they both grabbed me by the arm and started pushing me. And when I got to the next stairway there was nobody around and they started taking a couple of shots at me." He stated that the initial push at the stairs was "not really forceful, but it was enough force behind it to make me stumble" and that he was able to regain his balance.

States said he was then taken to segregation, and other than being pushed in the basement corridor "to hurry up" there was no further assault until he arrived in the segregation area. In the basement passage, he said, they were joined by C.O. 5 Vassos Zodiates, whom he described as being agitated and "shaking".

I am satisfied that States was in error in his identification of Zodiates. The 3B segregation log showed C.O. 4 George Wilson as the senior officer who

signed States into segregation. Wilson confirmed this. Zodiates denied being there. Certainly if Wilson had been in charge of the escort, there would have been no reason for Zodiates to be present also, on this occasion.

Wilson's evidence further contradicted that of States, as to when Casey and Dassy first came into contact with the inmate on the occasion in question. Wilson said that while he was taking States to segregation, he met Casey in the rotunda and asked him to accompany them. As for Dassy, Wilson said that it was not until they were in the segregation area that Dassy first came into the picture. Wilson denied that there was any assault by himself, or by Dassy or Casey in his presence. With the above in mind, I now refer to States's evidence as to what he alleged occurred when they entered the segregation area:

Mr. Zodiates said "We got this little prick now, the one that's been causing a lot of trouble." So I just stared at him. And he said to me, "Don't stand there staring at me; change your clothes. Take off your blues." So I took off my blues. And they give me this white thing. It looked like a dress, and felt like cardboard. They said, "Put this on."

So I put it over the top of my head, and just as I put it over the top of my head Mr. Dassy was on the left side – sorry, Mr. Dassy was on the right side of me; Mr. Zodiates was on the left side of me; Mr. Casey was standing in front of me. And just as soon as I got – I hadn't pulled this thing over the top of my head; I just barely got it over the top of my eyes, my face. I was trying to put my arms through. Just as I was trying to put my arms through Mr. Casey took a shot. He hit me in the chest.

That is when I looked at him. I said "Hey, man, what did you do that for?" He said, "Just shut up; hurry up and put that thing on." So I hurried up and put it on.

Just when I said that to Mr. Casey Mr. Zodiates said – that's when Mr. Zodiates spoke up. He says "When you speak, you look at me." So I turned my head like that to look at him. And when I did, that's when Mr. Dassy struck me from the side here, and knocked me on my knees. . . . I was down on the floor. And I put my arms over my head to cover up my face. I thought he was going to kick me. And that is when Mr. Dassy stepped on my left hand. And the knuckles were all swollen up. They said, "Come on and get up." They grabbed me by the arm and threw me in detention, and said, "We will be back to see you next morning." So they locked me up and never came back until next morning.

Mr. McRae inquired from States as to the reason that he was taken to segregation.

MR. MCRAE. What was the complaint against you that you were put in segregation?

A. For causing two guys to fight.

Q. And the two guys were Atkinson and Auld?

A. Yes.

Q. Mr. Commissioner, we have tried but we have been unable to find (and we

have searched as carefully as possible) any misconduct report for Mr. States. We do have one for Mr. Atkinson dated July 8, which was no doubt the operable one.

The Misconduct Report of C.O. 1 Richard B. Allgood with reference to a charge against John Atkinson of attacking another inmate read as follows: "On this date at approximately 6:05 p.m. I had just completed a patrol of 10 corridor with Mr. Bond when a fight broke out between inmates Jerry Auld and John Atkinson. I went into the corridor accompanied by Mr. Curry to break up the fight. The two inmates were then escorted to the dome. In the dome Atkinson said that Arnold States had told him to beat up inmate Jerry Auld."

Part 3 of the Misconduct Report quoted Atkinson's account as follows: "I was only pretending to assault him because if I didn't another big guy [States] would have." Mr. Taylor disposed of the matter by imposing indefinite segregation (not to exceed 10 days) with regular diet.

When the Misconduct Report was drawn to States's attention at the inquiry, he denied counselling a fight. States was asked as to the injuries he alleged he received.

A. The inside of my mouth was cut and my hand was swollen up and my jaw felt like it was out of place, because [when] I ate I could feel my jawbone hurting at the back in there and I asked the guard who was on duty that night if I could see a doctor and he said to me you are here for punishment, not nourishment. I said, okay, whatever you say, so then I went to sleep.

The next morning two white shirts and an officer dressed in a suit accompanied by a couple of guards came in and they said to me, "What happened," so I explained to them what happened. He said, "Well you know you are going to be charged," and I said, "For what?" and he said, "For counselling," and he says, "you are going to be sentenced to an undetermined amount of time," he said, "just according to your behaviour." I said "Okay," so they walked out.

MR. MCRAE. Did you have any further conversation with the two officers the following morning other than what you have told us?

A. I asked him if I could see a doctor.

Q. Did you tell them why you wanted to see a doctor? Did you discuss with them what had happened the night before?

A. No, not that I can recall.

Q. Did you make any complaint to them . . .

A. No, I did not.

Q. Did you ask to see the Superintendent?

A. No, I did not.

Q. Is it not possible for inmates to see the Superintendent every morning if they put in a request?

A. If they put in a request.

Q. You did not put in a request?

A. The guard on duty would not let me put in a request that night. You have to put in a request the night before the next morning.

Q. Did you ask to put in a request to see the Superintendent on the night before?
 A. No, but I asked to see a doctor. That is when the guard said to me, "No, you are not in here for nourishment, you are here for punishment." I said okay, that's cool, and I sat back down and went to sleep.

THE COMMISSIONER. Do I understand you also asked to see a doctor the next day when you were visited by the two white shirts?

A. Yes.

Q. And what did they say? About seeing the doctor?

A. They said you have to put in a request to the guard, and I said I did that.

Q. Yes?

A. And they said put in another request.

Q. Did you put in another request?

A. No, I did not bother with it. He said no the first time.

Q. But this is a different guard that would be on duty now, is that right?

A. It was a different guard, but I just did not bother with it. He said no the first time and I got to ask him the second.

Q. Did you tell these two – perhaps I already asked this question – did you tell these two officers about what had happened the night before?

A. No.

Q. You did not, all right. How long were you in segregation?

A. Three or four days.

Although States indicated in his evidence that he was in segregation "three or four days", later he said that he was taken out of segregation the "next day" for the purpose of appearing in court and that when he returned from court he was placed in segregation again but that he "just got up there when the phone call came through, 'Send him back down, he is going to be working in the laundry,' so they sent me back down and transferred me up to the annex, so that is when I started to work in the laundry".

States did not know who had arranged for him to be returned to laundry duty, but he thought it might have been C.O. 6 Stewart Garrett. This is interesting on three counts. One is that it shows an interest by senior officers in the welfare of inmates, and, when they are sent to segregation for an indefinite period, some thought is given to releasing them at an early date where possible. This, of course, varies from inmate to inmate, and from senior officer to senior officer.

Another reason for States's release at an early date from segregation was that he was a young inmate and I think there was a conscious attempt to release young inmates from segregation as early as possible, save those who were known trouble-makers, in which case the purpose of segregation was twofold – punishing the offender, and setting an example to the other inmates.

Another possible reason why States was released to the laundry is that such services are carried out by sentenced inmates, and the correctional officers in charge prefer to have more "experienced" inmates working with them.

States was questioned as to whether a part of the problem was that he had been responsible for demanding that other inmates in the corridor perform

sexual acts on him. This was definitely denied by States. It is one of the problems, particularly where younger inmates are housed, that correctional officers have to be alert to.

States was asked why there was the allegation that he was behind the fight between Atkinson and Auld and he related some earlier difficulty between Auld and himself in the corridor, which pointed up the possibility of friction existing over small incidents where a number of inmates are confined together in a day corridor, particularly younger inmates.

When States left segregation to work in the laundry, he was housed in the second floor annex, which is a dormitory type of accommodation.

Mr. Carter, in his written submission, referred to States's recollection on this main allegation as being "completely distorted and fabricated" and "not founded on any supportive evidence". The weight of evidence was against this inmate's claim of an assault, at least to the degree that he alleged. If he did ask to see a doctor at the time he was placed in segregation, he did not follow up this request to the extent that one would have expected had he received the injuries he alleged. Further, if he had received such injury, would he have made the rapid recovery to which he admitted, in so short a period of time? As is mentioned elsewhere in this report, the policy at the Toronto Jail was changed part way through our proceedings (and we hope as a result thereof), in that persons admitted to segregation are medically examined both at the time of admission and at the time of discharge. Had this been the case when States was taken to segregation, the answer to his claim, one way or the other, would have been more conclusive.

As for States's evidence of an assault while he was changing into his segregation garment, this was a complaint that had been advanced by several inmates. I think it did take place at times. Such actions are, of course, inexcusable as well as cowardly. I do not doubt that these stories, whether true or not at any one specific time, did circulate among the inmate population. This may have been the basis for States's evidence on this point. He said he was struck in the chest, but made no complaint of injury in this area. States was not a very reliable witness. In view of this and of the positive denials by the correctional officers, it would be wrong to make adverse findings here, solely on the uncorroborated evidence of States, particularly where there is no supporting medical evidence or any acknowledgment of complaint to the Superintendent, while this opportunity was available. As also mentioned, the alleged injuries disappeared so quickly as to leave doubt about their having existed in the first instance.

States may well have been "pushed" on his way to segregation. In fact, after seeing him in the witness box and after hearing his evidence, I could well picture him purposely delaying his removal to segregation and the correctional officers losing patience and hurrying him along. This is where it becomes necessary for a competent senior officer to be in charge of an escorting party. "Come-along holds" and the use of such aids as plastic cuffs (discussed elsewhere) may be of assistance. Care should, of course, be taken as to how a recalcitrant inmate is moved down a stairway. Evidence of shoves and pushes would indicate that such methods were wrongly employed at times by the correctional staff.

States was not only a "problem" while in the Toronto Jail, but there was evidence that he posed difficulties to his probation officer. Miss Carol Eldridge, the social service worker at the Toronto Jail, said, "His probation officer commented that he was totally unreliable and he moved around and they could not ever locate him".

States admitted to Mr. Carter that he had been charged three times with breach of probation. He said, "They always give me the same probation officer . . ." He indicated that if he had a different probation officer he might co-operate better. He said that he had informed the probation officer, "You give me a hard time, this is my last visit." He alleged that the probation officer "started telling me, I got to be doing this. He won't explain it to me. I told him, 'Explain to me. I mean if you tell me I got to do this and I got to do that, I am doing nothing. You got to explain it to me. If you talk to me like that, I won't listen.' He said, 'You will listen one way or another.' I said, 'Okay, after this visit today you won't see me any more.' He said, 'I'll charge you with breach.' I said, 'Do that.' And when we finished talking, I left."

Whether a change of probation officer would have solved the problem is problematical.

States said he had a Grade X education. He caused some concern to the Commission as being typical of a type of young inmate who, unless properly guided, might easily fall into the revolving jail door syndrome.

States made reference to other matters, while he was an inmate at the Toronto Jail. These are set out as showing possible problems at the jail, without passing on the validity of States's claim in regard to these particular allegations.

He was asked if he had been involved in any other incidents with correctional officers, and replied, "On three or four occasions I would see Mr. Dassy in the hallway. I would be walking up and he would always cock his hand back to hit me and on a couple of occasions he did hit me.

MR. MCRAE. Was it just a friendly nudge?

A. No, I felt it, it took the wind from me. I didn't know whether he was serious or not. I didn't look back. I dropped my bag [of laundry] and put my hands to my stomach.

If the allegation against Dassy is true, and there were allegations of a similar incident involving at least one other correctional officer, the practice is one to be deprecated. There is no justification for a correctional officer, in passing an inmate, to strike him just for the sport of it. It would even reflect adversely upon the discipline of an institution that would tolerate such unwarranted conduct by correctional officers.

States also referred to C.O. 2 Dwight Sleigh and his broom closet in the following manner: "One other guy, he just all the time took me into the broom closet, and just said to me: 'Just move over', and no one else would be around. So I would say: 'If I beat you, what is going to happen to me?' He said: 'Well, you can take that chance and find out.' But I never took the chance."

Evidence was given by other inmates of Sleigh's tendency to use the broom

closet for disciplining purposes and that, too, cannot be condoned. The number of times Sleigh was mentioned by different persons and at different times rules out the possibility of a conspiracy.

Continuing with States's allegations about Sleigh:

THE COMMISSIONER. And what prompted him to invite you into the broom closet?

A. He said I was talking too loud at the back, or throwing things around, and called me out, or he would ask me to do something and I wouldn't do it. So he would call me out and take me into the broom closet. . . .

Q. On these occasions, when he took you into the broom closet, nothing happened?

A. No, he just pushes me up against the wall a few times, but he never hurt me.

Q. How many times did he take you to the broom closet?

A. I don't know, five or six.

Q. Had he ever, to your knowledge, taken anyone else into the broom closet?

A. Yes, I know another guy – two other guys.

Q. Who were they?

A. Three other guys.

Q. Who were they?

A. John Atkinson, Jeff Downey, and Tellier, that's his last name. . . . I don't know if they got beat or not . . .

States made further reference to a correctional officer whom he identified from the photograph album of correctional officers as C.O. 2 Joseph Furman.

They have this little skinny guy there who one night, I was in the annex, I called him out, they were going to beat me with the broom handle because I wouldn't go to bed. He told me: 'Do you want to fight?' I said: 'No.' He said: 'I am calling you out.' I said: 'Well, I am refusing,' and I turned away. He said: 'Why, are you chicken?' I said: 'No, I don't want to get sent to the hole.' He said: 'I know you don't want to fight.' So he went and grabbed a broom and came back out and started hitting me with the broom handle. He said: 'I'm giving you 10 minutes, when I come back in and check you had better be sleeping.' So when he came back in I had my head under the covers.

With reference to this episode, certainly if States was disturbing other inmates at night when he should be sleeping there was some justification for attempting to discipline him, but not in this manner. Where younger inmates are involved and the correctional officers themselves are young there may well be some bantering.

States was asked if he thought that some of the correctional officers were just trying to scare him into behaving himself, to which he answered that he did not know.

Casey said States did not like segregation, and threatening him with it scared him. As for any physical force, "I think it would hurt him more to put him in segregation, because that way he knew he was going to be alone there from five to 10 days."

This evidence indicated not only the punitive force of segregation, but also how the threat of it could be used to keep inmates in line.

Casey denied that the stairways were used for the purpose of disciplining inmates. He said he had never heard of an inmate falling down stairs, although there were instances of this happening.

Before closing out the incidents involving inmate States, I wish to refer specifically to one of the senior officers he misidentified – C.O. 5 Vassos George Zodiates. I was favourably impressed with Zodiates' manner of giving evidence whenever he appeared before the Commission. I formed the opinion that he was both a capable and a conscientious officer. He was 38, six foot tall, weighed 185 pounds, and was born in Cyprus. He had 12½ years of experience as a police officer in that country and came from what he described as a family of police officers. He joined the Toronto Jail in April 1967 and had the equivalent of a Grade XII education.

Zodiates was questioned about the part he was alleged to have played in States's allegation. His reply was, "I cannot recall anything really." He added that the complaint was inconsistent with the attitude he adopted towards inmates. "If I was there, sir, I can't recall, but if I was there I would not allow such things happening. First of all I can't recall such an incident, but definitely if I was there I would not allow such a thing to happen."

The Atkinson Allegations

"Some inmates were mopping the floor so we were told to stay off the floor until it got dry so I hopped from cell to cell to go down to the end of the wing where it was dry. . . . [Sleigh] called me back up and when I started walking on the floor he told me to jump back in the cell and do my monkey act over again, meaning to jump from cell to cell." (John Atkinson)

"Everybody had a turn with Mr. Sleigh . . . going into the broom closet and getting either told off or beaten. I can't consider anything beating unless the kid comes out with blood gushing all over the place. . . . They close the door and you hear a body bouncing around and a kid comes out with his hair all tangled up, and with his face red and you know he got hammered." (Inmate Frederick Tellier)

" . . . the other guard would stand outside in the hallway; just in case the kid got the best of Sleigh the other guy would go in and start pounding into the kid with Sleigh." (Tellier)

Inmate John Edward Atkinson made reference to two separate allegations of unnecessary force. Both were alleged to have occurred in July 1974. One of the incidents, which will be referred to as the first allegation, involved Correctional Officers Sleigh and Dassy. It is this incident that was mentioned by inmate Arnold Charles States, while giving evidence about his own allegations.

1. First Allegation

EVIDENCE OF JOHN EDWARD ATKINSON

This witness failed to appear pursuant to his subpoena and in accordance with promises made on two or three occasions to Commission investigators. It was necessary for Commission counsel to obtain a bench warrant under The Public Inquiries Act. Atkinson was apprehended by the Hamilton-Wentworth Regional Police and handed over to the Commission investigators, who were all members of the Metropolitan Toronto Police Department.

Atkinson's age at the time of giving evidence was 17. His home address was Hamilton, Ontario, where he lived with his parents. He finished Grade VIII, most of his education being obtained in training schools where he had been confined as a juvenile delinquent. Reaching the age of 16, he was no longer triable by the Family Court and he admitted to subsequent offences of common assault, public nuisance, and damage to property. In July 1974 he was re-committed as a parole violator and remained in custody until April 9, 1975.

From July 2, 1974, until August 16 he was housed at the Toronto Jail and then was transferred to the Guelph Correctional Centre. He recalled an incident that occurred in July 1974 at the Toronto Jail while he was housed in Corridor 10. He stated that "some inmates were mopping the floor so we were told to stay off the floor until it got dry so I hopped from cell to cell to go down to the end of the wing where it was dry."

He identified Sleigh as the correctional officer who ordered the inmates to stay off the floor until it was dry. He thought Sleigh "called me back up and when I started walking on the floor he told me to jump back in the cell and do my monkey act over again, meaning to jump from cell to cell". He stated that Sleigh then called him out onto the landing following which he was taken by Sleigh into the broom closet. He said that Sleigh gave his watch, keys, cigarettes, and lighter to another correctional officer.

The broom closet he was referring to was in the vicinity of Corridor 9. Atkinson said that at first nothing untoward happened, that Sleigh just told him he had to scrub the closet out. Atkinson alleges that when he came back out of the closet Sleigh said that he (Atkinson) was laughing at him "so he grabbed my hair and threw me . . . in by the hair." He stated that Sleigh then "pushed me around a little".

Atkinson said that he then, at the request of Sleigh, picked up a bucket and scrub brush and went to fill the bucket with water from a tap in Corridor 9. "So when I was coming back out I had the door closed and I said, 'Do you want to open the door?' and he said, 'Not until you use your manners', so I dropped it."

The door referred to is a grille from Corridor 9 to the landing outside Corridors 9 and 10. Atkinson said that when he put the bucket down and walked away, Sleigh telephoned to Dassy who had been on the west side of the rotunda at Corridors 3 and 4, or 5 and 6. Corridors 9 and 10 are on the east side of the rotunda.

Atkinson stated that he was then taken by Sleigh to the broom closet outside Corridors 5 and 6. Dassy was present and inquired what the problem was, to which Atkinson said, "Mr. Sleigh doesn't like my attitude." Atkinson said that he was then taken into the closet and Dassy was on his left side and Sleigh on his right. Sleigh started punching him in the stomach, while Dassy was giving him judo chops on the back of the neck. He stated that he was struck three or four times by Sleigh. The force of the blows was "not really that bad". Dassy asked him if he was going to apologize for being rude and he replied, "No." Dassy gave him another judo chop. He said he received three or four judo chops from Dassy on the back of his neck. His head was being held down by the hair. He indicated that "there really wasn't much force" in these judo chops.

Sleigh's punches to the stomach were with a closed fist. Atkinson said he was then taken back to the Corridor 9 broom closet by Sleigh and he scrubbed the closet floor. Atkinson said that his neck was sore two days later and at that time when he saw Dassy he told him, "I got a sore neck", and Dassy replied, "Maybe the next time I will put it back into place for you."

Atkinson indicated that the blows to the stomach did not bother him but that the judo chops to the neck did. This was attributed in part to a pre-existing condition. Atkinson had injured his neck on a diving board in 1973: "Back in 1973 I went to the chiropractor because I had this here bone in my neck. I was getting these real bad headaches because I had a bone that was tipped in the back of my neck, and he replaced it. And ever since I got these judo chops, I got headaches again, now, you know."

Atkinson said that the chiropractor, in 1973, had cured him of his headaches and that at the time of giving evidence he was getting them again, although his evidence in this connection was somewhat ambiguous.

Atkinson was further questioned about the length of time the headaches lasted as a result of the broom closet incident, to which he replied: "Well, like I still get them, you know. Like it doesn't stay forever. I get them once in a while." He also stated that they were less frequent as time went on and, "I haven't had them lately." He stated that the last time was in March (his evidence was given on April 22, 1975) and that he had not seen a doctor or chiropractor in connection with the headaches.

Atkinson's evidence with reference to the broom closet is an additional complaint made by an inmate against Sleigh's use of the broom closet, and even if the blows to the stomach did not "really hurt" they constituted an assault that was unwarranted and against regulations. If Sleigh wished to lay a charge against Atkinson for insubordination or not carrying out an order, then he should have followed the proper procedure.

EVIDENCE OF GARY DASSY

As for Dassy's actions in this matter, they provided another example of the unsuitability of this man as a correctional officer and of his complete mis-

interpretation of his role. The evidence was that Atkinson was 5'6" tall and weighed 115 to 120 pounds. Dassy was 6'2" and weighed 240 pounds.

Dassy confirmed that he received a telephone call from Sleigh, who asked if he could "bring Atkinson over and we will take Atkinson up to 5 and 6 in the broom closet". Dassy said that in the broom closet he asked Atkinson if he was going to do the work Sleigh had asked him to do. His understanding was that Atkinson was not a sentenced prisoner at the time and therefore was not obligated to do general work, but only to clean his own cell. Dassy admitted that he was therefore endeavouring to have the prisoner do work that he was not legally obliged to do.

Dassy stated that Atkinson, in answer to his question about working, replied, "I don't have to." He stated that Sleigh then said, "He needs a lesson, Mr. Dassy." Dassy admitted striking Atkinson with his open hand across the back of the neck. He stated it was like a judo chop. He also said he slapped Atkinson's face with his open hand "maybe twice". He admitted holding Atkinson by the hair "with a fair degree of force". He stated that Sleigh also hit Atkinson with an open hand in the face and the back of the head. Dassy was asked as to the degree of force that was used by Sleigh and his reply was "about the same type of force I used, sir. It wasn't very severe."

Dassy said that he was working in Corridors 3 and 4 and they went to the broom closet off Corridors 5 and 6 "because there were inmates in the 3 dormitory, sir, and they would have heard what was transpiring". He said that there were no inmates in Corridors 5 or 6 at the time.

Dassy, therefore, confirmed in his own evidence the assault on Atkinson and he also confirmed in answer to questioning by Mr. Carter that at some later time Atkinson told him that he had a sore neck.

EVIDENCE OF DWIGHT SLEIGH

C.O. 2 Sleigh's evidence was that he took Atkinson over to the broom closet at Corridors 5 and 6 for the purpose of checking for scrub brushes since they had checked at Corridors 9 and 10 and found none. He said that Atkinson refused to go into the broom closet at Corridors 5 and 6 to check for scrub brushes and that when he refused he (Sleigh) grabbed him by the shoulder and shoved him into the closet and told him to look. Sleigh said that he then told Atkinson to stand by the door and that he (Sleigh) bent over to see if there were any scrub brushes in a little box in the closet. Sleigh said he heard someone coming from behind and turned around and that he then saw Dassy, who had followed them into the closet, slap Atkinson in the mid-section. Sleigh said that Dassy was the only one who struck Atkinson and that, as a result of Dassy's striking Atkinson, Atkinson "accidentally keeled over" and it was after that that Dassy struck Atkinson with his open hand in the back of the neck. Sleigh stated that Dassy had entered the broom closet without any warning and had proceeded to strike Atkinson.

I find this statement by Sleigh a most unusual one and in view of the evidence of both Dassy and Atkinson I cannot accept it as a true recounting of events.

Sleigh's defence to these various charges was in the nature of a denial of using force, and a claim that he was using the broom closet only as a place to talk to young inmates. In view of the number of similar dissociated incidents I find it most difficult to accept Sleigh's evidence that he did not assault any inmate in a broom closet. Taking the most charitable view, we may suppose that he considered that imposing his own brand of swift justice and punishment was effective and less harmful to young inmates than having them charged and placed in segregation.

EVIDENCE OF FREDERICK LORNE TELLIER

Inmate Tellier was questioned about Sleigh's use of the broom closet:

THE COMMISSIONER. Now did you hear about anybody else going into the broom closet with Mr. Sleigh or any other correctional officer?

A. Everybody had a turn with Mr. Sleigh.

Q. In what way?

A. Going into the broom closet and getting either told off or beaten. I can't consider anything beating unless the kid comes out with blood gushing all over the place, he just got hit around a bit, you know.

Q. You mean that he might have had some force applied to him but it was not undue force. Is that what you mean?

A. [Indicates with his head].

Q. Did you actually know about this or you just see someone go in there and you see him come out and you don't know what happens inside?

A. Well they close the door and you hear a body bouncing around and a kid comes out with his hair all tangled up, and with his face red and you know he got hammered.

Q. How many times did you see that happen, where Mr. Sleigh was the one that went into the cupboard with the inmate?

A. The only one I can recall is Johnny Atkinson but I cannot remember the names of the inmates. I can't remember the date, I can't remember anything except seeing guys come out of the closet with red faces.

Q. How many times did you see that happen, whether you remember the names of the inmates or not? Can you recall?

A. Seeing it clear in my head, I can count about five. . . .

Q. And was Mr. Sleigh involved in all of these?

A. Yes, he went into the closet with the inmates.

Q. Anybody else?

A. Well the other guard would stand outside in the hallway, just in case the kid got the best of Sleigh the other guy would go in and start pounding into the

kid with Sleigh.

Q. And all these occasions was there something that occurred before that, that Mr. Sleigh wanted to discipline or quieten down the inmate?

A. Would you repeat?

Q. On these occasions when you say Mr. Sleigh went into the broom closet with an inmate, was there something that happened before that that the inmate was acting up?

A. Well, that's what started it off. Most of the time it just could have been through a slight fooling around with the kid and the kid says lay off. . . .

He said he also was subjected to Sleigh's mode of discipline. He said that "one of Sleigh's favourite things [was] grabbing somebody by the hair because he has done it to me a lot".

MR. MCRAE. You had better tell us about that. What would he do to you?

A. Well, me, I guess — I don't know, I have always felt Mr. Sleigh was scared of hitting me because I got cystic fibrosis and if he hit me in the stomach I'm dead. You're out. I don't got no muscles in my stomach, you know and he more or less —

Q. Yes?

A. He more or less freaked out. But Mr. Sleigh, you see he has grabbed me by the hair and give me a couple of punches in the stomach, just kidding around, but they were pretty hard blows to me, you know.

Q. Why would he grab you by the hair and punch you in the stomach?

A. Well, he would start kidding around with you, just generally kidding around. One day he might, you know, kid you around and start giving you a couple of boots in the back of the leg or something, and if you got mad and said "lay off" that is when he would grab you, "What did you say?"

Q. Would this be in the way of discipline, this punching in the stomach or kicking in the back of the legs?

A. That ain't no discipline.

THE COMMISSIONER. Was it playful? Is that what you are indicating? Just the way two inmates might sort of jostle each other or play around with each other, fool around with each other?

A. Not as far as I was concerned, not when he did it to me. He might have been. I don't know, but as far as I was concerned there was no kidding around on it.

Q. Did you ever go into the broom closet yourself?

A. I have been in the broom closet a couple of times but they have never hit me.

Tellier said that once when he was taken into the broom closet by Sleigh "all he told me to do was cool my engines". He said that on another occasion he was taken to the broom closet by C.O. 1 Ray Lucifora, whom he identified from the book of photographs.

MR. MCRAE. He took you in the broom closet, Mr. Lucifora?

A. Yes.

Q. What for?

A. I got swearing with him, using a couple of words, kidding him about his nose.

Q. Yes?

A. And he took me into the closet and then he pushed me against the wall a couple of times, and he kept on saying, "Come on, come on" like, I don't know exactly if he was going to hit me, but he kept on saying, "Come on, come on."

Q. Challenging you to hit him?

A. Right.

Q. Yes.

A. And there was no way I was going to hit him because all I would have to do was hit him once and there would be about 10 screws inside that closet going at me.

Q. Ten screws, you mean 10 correctional officers?

A. Yes.

Q. So what happened?

A. He just told me to keep my mouth shut from now on or next time he would take me in the broom closet he would do me in.

Q. He didn't hit you?

A. No, just pushed.

2. Second Allegation

EVIDENCE OF JOHN EDWARD ATKINSON

Atkinson stated that he did not have any trouble with either Sleigh or Dassy on any other occasion before or after the incident referred to in the first allegation.

Atkinson complained of only one other incident involving himself, and that was when he had an argument with another inmate. C.O. 1 Victor Ayre spoke to him and he admitted to "mouthing off" to Ayre. C.O. 4 Robert Nuttall was then called and he took Atkinson out onto the landing and spoke to him about his attitude. Atkinson said that after talking to him, Nuttall had him moved from Corridor 9 to Corridor 10.

During the hearings, I found Nuttall to be an efficient correctional officer, fair, and possessing good common sense. Rather than charging Atkinson for his admitted "mouthing off", he transferred him to another corridor.

Atkinson said that at the time of the transfer he asked C.O. 1 Gerald Rowsell if he could go and get his property from Corridor 9. Rowsell told him to wait. Atkinson said that Ayre, standing behind Rowsell, was laughing at Atkinson "because I lost". Atkinson was no doubt referring to the transfer out of the corridor. Atkinson stated that he then told Ayre, "Okay, you get the last laugh in here . . . I'll get the last laugh on the street if I ever

see your back turned." He said that Rowsell then slapped his face.

Atkinson stated that Nuttall was told about his threatening of an officer and he was told to "settle down" and scrub the floor. The date of this occurrence was not indicated, as no Misconduct Report was made out. It was after the broom closet episode, and may well have been after Atkinson had been found guilty by the court and was awaiting transfer to Guelph Correctional Centre, in which case, as a sentenced prisoner, he could be given work duties. With reference to this slapping episode, Atkinson admitted that "I deserved that one."

EVIDENCE OF GERALD FREDERICK ROWSELL

C.O. 1 Rowsell gave his age as 41. He was 5'11" and weighed 221 pounds. He served for nine years with the Canadian Army, during which time he did detention barracks duty as a member of the Provost Corps. Subsequent to his army discharge in 1959, he worked as a foreman in a lumber yard. He began his duties at the Toronto Jail in the summer of 1974.

He described Atkinson as a "trouble-maker". He said, "He was a leader of all instigators – any instigation that went on in there, John Atkinson, as far as I was concerned, from what I could observe, was the leader of it in the corridor."

Rowsell's evidence is of interest with reference not only to the Atkinson incident, but also to some of the problems correctional officers are confronted with and how they are obliged to solve them.

He said that he had completed the three-week training course for correctional officers at Guelph on March 21, 1975. He said that he had averaged, since his employment at the Toronto Jail, approximately two extra shifts a week (16 hours overtime a week).

MR. MCRAE. So he was an instigator of trouble – that was one thing you could recall about him?

A. Yes.

Q. Anything else?

A. Well, any time there was trouble we would take Atkinson out and take him down to see the Chief or whatever the case may be.

Q. What effect would that have on Atkinson?

A. Well, he always went back and there was always a little cheer, you know, if he got back in the corridor, he is a good guy and he won again.

Q. He made it back to the corridor?

A. Right.

Q. Instead of going to segregation?

A. Yes.

Q. He would be taken down to see the Chief, would he?

A. Well, my experience with Atkinson – at the time I was just a new officer

there, and I didn't really know. I was still trying to learn, and I used to take — any time there was an inmate that was doing anything I was figuring was against the rules, I would take him to the Chief and explain my story, and then get the instructions from the Chief what to do, you know.

Q. Rather than —

A. Rather than take it on myself and say, okay, I am going to charge you and put you in segregation. I wanted to know what the procedure was.

Q. How many times was it that you took Mr. Atkinson to see the Chief yourself?

A. I couldn't recall the exact amount, but I would say 12 to 15 times. . . .

Q. Because of his misconduct?

A. Because of his misconduct or his setting other inmates — kind of pushing other inmates into something.

Q. Did you ever make out a Misconduct Report on him and have him placed in segregation yourself?

A. No, I don't know, sir, I never made any misconduct on him.

Q. All right. We have heard evidence, and I think you were here to hear part of it, were you?

A. Yes.

Q. Of an incident that happened involving initially an inmate, John Edward Atkinson and Mr. Ayre, Correctional Officer Ayre?

A. Yes.

Q. Where did that happen, do you recall?

A. It started in 9 corridor.

Q. Yes.

A. After — it was in the evening around 7 o'clock I believe.

Q. You can't tell us the date, I take it?

A. I can't tell you the date on that. . . .

Q. It started in 9 corridor?

A. It started — I was on 10 corridor.

Q. Yes.

A. And there was a shouting match between Mr. Ayre and Mr. Atkinson. So I went over to see what the shouting was all about, and both of them were shouting back and forth like two kids.

Q. You would be stationed at the guard station outside of — 10 corridor?

A. Yes. . . .

Q. And Mr. Ayre would be at the guard station outside 9 corridor?

A. Right, sir. And to me they were acting like two kids, both Atkinson and Mr. Ayre, shouting back and forth, so I went over and I said to Atkinson, "That's enough", you know, "Go and sit down." And my experience with him is that he would go and try to intimidate the officer into doing something desperate. So he wouldn't be quiet, so I unlocked the door with my key and took him to the dome to see the Chief. And then after the Chief had talked to him, the Chief told me to take him back and put him in 10 corridor, which I did, so Mr. Ayre walked across after I had placed [him] in 10 corridor, and they started shouting again, so he threatened Mr. Ayre, he said, "If I catch you on the street I'll beat your head in," or something to that effect. I don't know the exact words. . . .

Q. You were quite a new correctional officer at that point. What about Mr. Ayre?

A. Mr. Ayre and myself started approximately the same time. . . .

Q. And he would be inexperienced as well?

A. Right. So when Atkinson started threatening Mr. Ayre what he would do on the street if he met him, I opened the gate to take him back down to the Chief again. . . . He had a very wild look in his eye and his fist was clenched, and he said, "If you will turn your back on me I will do the same thing to you." So I just give him a little cuff on the head and said, "Come on, down the stairs", like that, with my hand, and took him down the stairs, saw the Chief —

Q. You hit him once with the back of your hand?

A. Just once. The cuff on the back of the head.

Q. Yes. On the back of the head?

A. It wasn't on the back of the head. It was kind of, oh, on the cheek like that [indicating]. . . . Then I went back to my corridor, and approximately 9:30, lock-up time, the Chief brought Atkinson up and told me to place him in the first cell in 10 corridor.

Rowsell was refreshingly honest in admitting striking Atkinson. There were instances of correctional officers denying any assault on inmates when the weight of evidence indicated the contrary. Indeed, at times I had anticipated a defence in connection with some of the allegations, that there was use of force, but that the force used was not excessive or was for the purpose of self-defence or to control an inmate, and I was surprised that the evidence of the correctional officers was that no force, even by way of self-defence, was used.

Atkinson in his evidence admitted that he had "lots of pull in the wing" and that he was "influencing other inmates". One could therefore envisage him as a rather aggravating young inmate. Over and above the threats made to Ayre and Rowsell, certainly if he had to be paraded to the Superintendent the number of times Rowsell mentioned he must have been quite a trouble-maker and a thorn in the flesh of a correctional officer.

There was evidence of other, similar shouting matches between inmates and correctional officers. Evidence was given during the inquiry by correctional officers that this was not an effective way to deal with an inmate, since it meant that a correctional officer was lowering himself to the level of the inmate.

Ayre and Rowsell were new correctional officers with the rank of C.O. 1. Rowsell was a more mature man with a varied background.

Ayre was 20 years of age with a Grade XII education, having completed high school in Nova Scotia. He commenced working at the Toronto Jail in July 1974. He was 5'9" in height and weighed 152 pounds. He stated that he had a two-week training course at the "Governor's Mansion" across the street from the Toronto Jail under the supervision of Lieutenant Stan Johnson. This was the former residence of the jail governors outside the front entrance of the jail, and has recently been used as a training school. Ayre took the course in January 1975.

Without criticizing Ayre's background or training, I think it should be pointed out that from discussions with correctional personnel in many places, I believe the consensus is that correctional officers at an institution such as the Toronto Jail should, as a general rule, be older than the average inmate with whom they come in contact.

A large proportion of the inmates at the Toronto Jail are between 16 to 24. Wherever possible correctional officers dealing with such young inmates should be five to 10 years older. They would then be able to command a certain respect of age that a contemporary correctional officer could not.

In the Atkinson shouting episode, Ayre, aged 20, reacted in kind, whereas Rowsell, aged 41, considered that Atkinson and Ayre "were acting like two kids".

Rowsell declared that after the above incident he had no more trouble with Atkinson. It was his opinion that the "cuffing" of the young inmate earned him Atkinson's respect. He explained his action this way: "I looked at him as a son of my own, you know, and I just clipped him more or less the same as if he was a son of my own, and more or less like a father, you know, 'Come on, son,' I wasn't mad at the kid personally." This was Rowsell's reasoning in retrospect. It may have been his reasoning at the time of the incident as well, even though his quoted examination by Mr. McRae might have indicated a provoked reaction. At any rate it could not be considered as a severe assault. In the scale of some of the things heard by the Commission, it might indeed be rated as exceedingly minor. It might be somewhat akin to the reminiscences of some older citizens who recall how a "friendly" town constable took them behind a fence and gave them a boot in the pants for some misdemeanour rather than booking them or telling their parents. That action on the part of the town constable, in recall, always had the desired effect of straightening out the recalcitrants. Or it may have been a school teacher with an old-fashioned strap or birch.

In Rowsell's case, his cuff or clip may have been well intended. The danger of putting any stamp of approval on such action in a place like the Toronto Jail, or in any other Ontario institution, is that it may well be misinterpreted by a correctional officer such as Dassy. Even if done by an older, mature, and "fatherly" Rowsell, an inmate other than Atkinson might have reacted differently.

Also, where are such tactics justified? How far may one go, to discipline an inmate, or to try and extract information from him? The following is Dassy's evidence with reference to the same inmate, Atkinson. How far does the end justify the means? I shall leave the answer in this case to the reader, for I am sure there cannot be unanimity on the subject. I cite the evidence to show that a consideration of the problems and the duties of correctional officers should not be oversimplified.

EVIDENCE OF GARY DASSY

Atkinson was mentioned in connection with the States episode as having had an altercation with one Auld. Dassy related this as having occurred about three weeks after the broom closet episode which involved Sleigh, Atkinson, and himself. He stated that Atkinson was brought to 3B segregation by Casey, C.O. 4 George Wilson, and himself. There was a conversation between Atkinson, Casey, himself, and C.O. 4 George Wilson who, he said, was the Chief that night. Dassy stated, "We frightened him [Atkinson] into telling us what we wanted to know." He said that Atkinson was not struck at the time, but was threatened that if he did not tell who was responsible for certain actions of a sexual nature "he would be very sorry".

Q. And by your presence you were there to intimidate?

A. To intimidate, yes, sir.

Q. And you were there to intimidate Atkinson?

A. Yes, sir.

Q. And that was your intention?

A. Yes, sir.

Q. And as far as you could see from the actions of the others would you say that it was their intention also?

A. Yes.

Q. If that was your impression, what did Mr. Wilson do to convey that impression to you?

A. Mr. Wilson used another tack. He was only going to be in the segregation cells for a short time and if he wanted to spend a longer time there he was going to make sure that he did.

Q. So the threat you attribute to Sergeant Wilson is that he indicated to the man [that] if he did not really tell what had gone on, he would spend a lot longer in segregation?

A. Yes, sir.

Q. What about Casey?

A. The same type of threat, sir, along the lines of mine.

Q. What was your type of threat?

A. That we were going to come back and pay a visit to him if he did not tell Mr. Wilson what he wanted to know.

Q. What do you mean by that?

A. We left it up to his imagination, sir.

Q. I asked what did you mean by that?

A. I meant that we would take him out, sir, and hit him if we had to.

Q. And by using the words that you did to Atkinson, do you believe that he drew the inference that you intended he should draw from what you said?

A. Yes, sir.

Q. And what happened in respect to Mr. Atkinson?

A. He told us what we wanted to know about Arnold States, sir.

If Dassy's evidence was correct, this poses a problem of whether the

threat of physical force or segregation should be used to have an inmate give information to correctional officers. To be practical about the matter, it should depend upon what information is required and the nature of it. The matter might be considered to be a moral issue in a microcosmic way, similar to that of sacrificing in battle the lives of a number of men in order to achieve a military victory that would shorten a war and thus save a larger number of lives.

The information sought in this case apparently had to do with certain sexual activity in the corridor housing young inmates. It was, therefore, a matter that the jail authorities had a right to obtain information about. No physical force was used on Atkinson, although there was obviously some mental duress. Commission counsel, Mr. Bynoe, summed the matter up in a question to Dassy: "In the interests of efficient operation of the jail and control of inmates, would it be your view that the information that you were requesting was information that was proper and necessary for the efficient management of the institution?" To which Dassy's answer was: "Yes, it was, sir."

ATKINSON SUMMARY

On Atkinson's first allegation, I find that he was assaulted by both Dassy and Sleigh. There might be some excuse for taking an inmate out of a corridor and talking to him on a landing or in the rotunda. There is no excuse for taking an inmate into a broom closet and using force on him. That force does not become any more justified when the inmate is "invited" to make the first move. Even taking an inmate into a broom closet just for a "talking to" is something that should not be allowed by the authorities in the Toronto Jail, as it is open to both misinterpretation and abuse.

With reference to the second allegation, I cannot officially condone Rowsell's action in slapping Atkinson, but on the other hand one can understand the provocation behind it. As Atkinson himself admitted, he deserved it and there was no suggestion by Atkinson that he was injured by the slap.

The Gray Allegations

"Yes, I think many officers will remember him. For one, he escaped, which is not very good . . . we called him 'Road Runner Gray'."

Richard James Gray was born in 1956 and was 18 at the time he gave evidence. He left school at 16, and later attended a community college. He was convicted on charges of robbery, breaking and entering, failure to appear, escaping custody, and possession of narcotics. At the time of giving evidence, he was serving 21½ months at Guelph Reformatory. The escape from custody was from the Toronto Jail.

Gray's parents were present at the inquiry and were of the opinion that their son should not have suffered remission of sentence of approximately six months by reason of his abortive escape from the Toronto Jail.

They were advised to consult a solicitor and then make a representation to the Deputy Minister of Correctional Services.

For security reasons I heard the evidence in connection with the escape *in camera*. It is sufficient to say that the escape occurred on re-entry to the jail from the police wagon used to transport inmates from the courts to the jail. The escape was assisted by the malfunctioning of a door. This was remedied. There was no evidence before me that indicated the jail staff was at fault. Immediate chase was given and recapture made. I therefore find it unnecessary to make any recommendation with reference to this incident.

Gray made four claims of assault against the correctional staff. In time sequence, he named Sleigh, Paar, Stafford, and Davey. It is necessary to examine each of these allegations separately.

1. First Allegation

Gray alleged that in May or June 1974 he was assaulted by C.O. 2 Dwight Sleigh.

MR. MCRAE. What happened between you and Mr. Sleigh?

A. Well, I was waiting to go to court, I think, at that time for a bail hearing.

Q. Would that be in the morning, then?

A. No, this was in the afternoon this happened. As soon as I went into the jail, he likes to – that is the attitude he gave me – he likes to put the inmates straight before they get in there and start screwing around. He likes to tell them what is going to happen before anything does happen, if anything does. So I was in there this one time when I was in Corridor 9 and 10, I think it was. I was in Corridor 10. . . . And he was calling requests and he said, “Who wants to make out requests”, and I stuck up my hand and I said, “Right here, I want to make one right here.” So he called me over to the bars —

Q. You went down the end of the corridor to the grille?

A. Yes.

Q. Was Mr. Sleigh outside in the guard station?

A. Right.

Q. Out on the landing?

A. Right. And he said, “When you are answering me, say ‘Yes, sir’.” I said, “Yeah, okay.” He said, “What did you say?” I says, “Yeah, all right.” He said, “What do you mean, yeah, all right? Say ‘Yes sir’.” I said, “Yeah, okay, yes, sir.” So he pulled out a request form for me and that was fine and I am back in the corridor again and I forget what he called, something again, and I stuck up my hand and I said, “Yeah, right here”, again. And he called me to the bars. But this time he opened the door, right, and he said, “What did I tell you, to call me sir,” and I said, “You know, I forgot about it, you know.”

Q. You have a short memory?

A. Yes, I guess so. So he took me into the broom closet.

Q. Just you and he?

A. Just him and me. . . . and he said, “What did I tell you about calling me sir?” and I said, “Well, I just forgot. I am not used to saying yes sir and no sir at everything.” So he says to me, “I am going to teach you not to forget”, right, so he started punching and kicking me, right.

Q. Where did he punch you?

A. On the chest.

Q. How many times?

A. He must have punched me about 10 times, right. He kept punching – he told me to put my hands behind my back, first of all, that is what happened. I put my hands behind my back and he says, “What did I tell you about calling me sir”, and I says, “Well, I forgot”, and he punched me in the stomach, right, and I put my hands in front of my stomach and he told me to put them behind my back again, right. In other words, “Let me hit you, put your hands behind your back”, so I would not put them behind my back because I knew he was going to hit me again. So he just kept on hitting me anyway. Even with my

hands there, he would not stop hitting me.

Q. Did you say he kicked you as well?

A. Yes.

Q. Are you sure about that?

A. He was punching me – this is the second [incident] – I am getting into that. That is the first incident. Then I went back and I tried to get in touch with the Superintendent, and he got a little peeved also with me for that.

Q. Let us deal with one incident at a time. The first incident, then, he asked you to put your hands behind your back. You did, and he punched you in the stomach?

A. Right.

Q. What degree of force did he use?

A. Pretty hard. I don't think it was all his weight but it was a fairly hefty shove, enough to give you a jolt and knock the wind out of you.

Q. So then you put your arms in front of you to protect yourself?

A. Right, and he kept talking to me, you know, my nerves are gone, you know what I mean, you know, ready to give you a sucker shot any minute. You don't know when it is coming sort of thing, he kept talking to me like that.

Q. And then he punched you some more while you were protecting yourself with your arms?

A. Right. I would not put my hands behind my back so he hit me with them in front of me.

Q. How many times?

A. He hit me quite a few times. He would come in right, left, right, left, like that.

Q. He hit you where?

A. In the ribs and chest and that, so I flew back against the wall and that was it, and he said, "Now remember, call me sir from now on", and I says, "Okay". He said, "What did I tell you", and I said, "All right, yes, sir", so he took me back to the corridor and locked me up again and I was a little mad and there were two guards on the floor at this time. Sleigh, I think he was looking after all the inmates in 9 corridor and the other guard was looking after all the inmates in 10 corridor, so there were two guards on the floor.

Q. Right.

A. So I called the other guard over that was working with Sleigh and I told him I wanted to see the Superintendent and he said, "Well, I will see what I can do", so he walked over to Sleigh and had a few words with Sleigh and Sleigh came over to the corridor and grabbed the keys and opened up the door and said, "Gray, come on out here." So I went out and he grabbed me by the arm and he marched me down the stairs. He said, "You want to see the Superintendent do you", and I said, "Yes."

Q. Mr. Sleigh took you down the stairs, did he?

A. Yes. So I was going down the stairs and then I was in the little dome part here.

Q. The rotunda, you mean, the dome?

A. Yes. . . . He brought me down the stairs and told me to sit down on the bench there, so I sat down on the bench and there was a lieutenant, I thought it was the Superintendent at that time, but it was the lieutenant.

Gray identified the lieutenant as C.O. 4 Robert Nuttall.

A. He just called me over and said, "This inmate here wants to talk to you, to have a few words with you." So I stood up and he said, "What is the problem, I am leaving in five minutes, I am getting off work, what is the problem?" I said, "I would like to ask you to tell this guard here to get off my back, he has been bugging me ever since I came into the jail here." He said, "What happened?" I said, "He just took me into the broom closet upstairs and laid a little beating on me." He said, "Well, I have known this officer for years and I know he would not do something like that", right.

Q. Sorry, you are going a little too quickly. This lady has to take it down.

A. And he says, "Are you sure you did not trip and fall or something in the broom closet?" . . . So I knew I was getting nowhere so I just said, "Forget it" and I walked back. Then I started walking back and Mr. Sleigh grabbed me by the arm and by this time there were a few guards. They were witnessing me talking to this white shirt and they knew it was over an incident about being beaten, right, and they knew I was going back to tell this officer, so they were all witnessing it, right. So after he was finished talking to me, Sleigh grabbed me by the arm and he started dragging me – not dragging me but making me walk a little fast by the arm, right. and all the other guards knew I was going to get another beating and they were all smiling and everything else. So he marched me up the stairs and took me in the same broom closet, right.

Q. This is opposite 9 corridor?

A. Right. He took me in there, took me in the same broom closet.

Q. Just you and Mr. Sleigh again?

A. Right. He took me in the broom closet and threw me up against the wall in the broom closet, and he says, "Did it do you any good to go down and see the man in charge, like this guy here, did it do you any good to see him?" I said, "No." He said, "I knew it would not", and then he started beating me. But then he started punching, this time he didn't care, you know, if he was going to punch me in the chest or anywhere, you know. He didn't care if he was going to leave marks because he was a little hot by this time. Right? So he just come in at me and at this time he was hitting me hard, right, but because he was mad, I flew up against the wall and all the buckets and brooms started flying all over the place.

Q. Was the door opened or closed?

A. Closed.

Q. It was closed?

A. Yes.

Q. Both times?

A. Right.

Q. Yes?

A. And he had me in there, and the buckets were flying all over, and I fell to the ground, right, and he kicked me a couple of times, and I got up off the ground, and he yanked me by the hair. I guess – he grabbed me by the hair and he threw – well, the door opened, that's right, by the impact. I hit the wall and the door opened.

Q. You hit the door and knocked it open?

A. That is right.

Q. Doesn't the door open in?

A. It opens in, yes.

Q. Well, how would you knock the door open?

A. When I hit the buckets and that, right, the impact, the air, it just boomed together, right, and the door opened. Right? And then he run over and he shut it again and he hit me a couple of more times then –

Q. Did you do anything?

A. No.

Q. Did you shout or ———

A. No.

Q. Did you fight with him or anything?

A. He told me, he said, "Come on", and he bent over with his chin – he pointed to his chin, and he said, "Come on", he said, "hit me, and see how fast I charge you with assault." Right? So I didn't do anything. I just stood there and took a beating and that was it. Then he walked me back up to the corridor and that was it, and I didn't do anything about it. My face was swollen up because he hit me in the face that last beating, and I was swollen up.

Q. Did you make any further complaint about what happened to you?

A. No.

Q. Did you tell any of the inmates – any of the other inmates about what had happened to you?

A. They all knew what had happened to me.

Q. How did they know?

A. Because they all crowded up against the bars, right, when I was being taken into the broom closet, and they were in here, they could hear boom, smash, crash. They knew what happened, and when I came out my hair was all messed. They didn't see it, but they knew.

Q. And I think you said your face was swollen?

A. Yes.

The allegation against Nuttall – if the identification was correct – was a serious one, namely, that he was not interested in hearing and investigating the allegation and, indeed, according to Gray, suggested that the inmate could have been injured in a different manner.

If Gray was brought downstairs with a request to see the Superintendent, then he should have been permitted to see the senior officer on duty and his complaint should have been heard out and then investigated. To have done less than this, assuming that Gray was telling the truth about his request, was a breach of duty on the part of the senior officer and would tend to encourage, on the part of line correctional officers, the conduct that was complained about.

I am satisfied, however, that if there was such conduct on the part of a senior officer, as alleged by Gray, Nuttall was not the senior officer involved. Gray's evidence throughout was open to grave suspicion in so far as its veracity. I would hope that the supposed exchange between Gray and the senior officer did not take place. If, however, there was the interchange claimed by Gray, the actions on the part of the senior officer, whoever he

may have been, were inexcusable. In any event, I fully accept the evidence of Nuttall.

EVIDENCE OF ROBERT ARNOLD NUTTALL

MR. MCRAE. Do you recollect that incident?

A. No, sir.

Q. Do you recall any incident where Mr. Sleigh brought an inmate down to you in the dome, where the inmate was complaining about something that happened to him?

A. Definitely not.

Q. . . . Could it have happened to you, without your recollection?

A. No, sir, it could not have happened without my recollection. If any inmate stated to me that an officer had assaulted him, then I would right there and then instigate or initiate an investigation into this. No investigation was made by me, so the incident could not have occurred. And even if, as I believe it did, the testimony that the inmate gave that he said, "Oh, well, forget about it", and walked away, that would not be sufficient for me because I would still carry through with an investigation.

From evidence given elsewhere by Nuttall and others I accept his testimony that he would have initiated an investigation even if Gray had said, "Oh, well, forget about it." If the evidence of Gray was correct on this point, as to the comment by the senior officer in the rotunda, that senior officer must have been someone other than Nuttall.

There was no possibility that Nuttall was confusing Gray with someone else. He gave his recollection and assessment of Gray as follows: "Well, I remember Gray as being – I think he worked either in the kitchen or in the laundry at one time. Kind of a borderline young fellow, sometimes his manner of talking would be a little flippant, just kind of overexuberant type young fellow. But I do remember him as being almost hyperactive but definitely a flippant attitude, sort of a way of talking. But I don't remember him getting into any major misconducts. I do remember him as a chap who had escaped from the jail, but generally nothing beyond that, sir."

Nuttall was examined by Mr. Bryant, one of the alternate counsel for Dassy.

MR. BRYANT. And if a guard has brought an inmate down to your office and said that an inmate wanted to speak to you, and the inmate proceeded to make some allegation that he couldn't get along with the officer or was, you know, being harassed, or he was told to do something when he really didn't have to do it, would it be your practice to return that inmate with that correctional officer back to the same corridor, or would you . . . follow a procedure and send him somewhere else?

A. Now this is a situation which does occur, and it is a judgment decision ——

Q. Yes.

A. You make your decision on the merits of the conversation you have had with the inmate, the conversation you have had with the officer, with any background knowledge you may have about this inmate's interaction with other inmates. You make your decision on what effect you observed that your counselling has had on this inmate, and when you take all of this together, plus just a little experience of what has happened when these occasions come before you, you put the whole thing together and you make a decision: do you return the man back to the corridor he came from or do you return the man to the next corridor to it or do you return [him] to a corridor completely divorced from that section?

Q. I gather you have had a fair bit of experience in that situation?

A. Oh, yes, sir.

As for Sleigh, his evidence was that he had never struck any inmate in a broom closet. In view of the several allegations made against him by various inmates, I cannot accept such denial. Particularly in this case, I believe that Sleigh was being provoked by repeated impudence on the part of Gray, in the presence of other inmates. Sleigh's authority would thus be brought into question. This would reflect on his efficiency and his control over the corridor. As Mr. Carter implied, Gray was "playing games" with Sleigh.

MR. CARTER. Didn't he call for requests for something again? I think that is what you said yesterday?

A. Yes.

Q. And you put up your hand for the second request?

A. Right.

Q. And you didn't call him "Sir"?

A. That is right.

Q. Your explanation was you had forgotten?

A. That is right.

Q. Now what time period was there between the first and second occasion that permitted you to forget?

A. Maybe 20 minutes.

Q. So you forgot in the 20-minute period?

A. That is correct.

Q. You didn't really forget, did you? . . . Mr. Gray, wouldn't it be fair to say you were just pushing him to see how far you could get away with it?

A. No.

Comment is made elsewhere in this report as to the matter of requiring an inmate to address a correctional officer at the Toronto Jail as, "Sir". As to the obligation, one way or another, it should be laid down as jail policy. It should be uniform and not at the whim of a particular officer. Even if not obligatory, there may be some inmates who would use such term of address, in any event. The demand on the part of some correctional officers for its usage appeared to be prompted more for the sake of discipline than to

obtain homage. At times, the repeated demand seemed calculated to spark confrontation.

Even if Gray was struck by Sleigh in the broom closet, I am of the opinion that the frequency and severity were exaggerated by Gray.

2. Second Allegation

EVIDENCE OF RICHARD JAMES GRAY

Gray related an episode that occurred while he was a corridor man on Corridor 3C in the new section of the Toronto Jail: "I was getting, you know, sick of the job. I would be in the middle of a card game and then, you know, have to jump up and sweep the floor. One day I was finished sweeping the floor and I was supposed to go and get a mop, and he told me to mop the floor, the guard." Gray identified the correctional officer as C.O. 2 Joseph Paar.

MR. MCRAE. Paar. And having told him that you weren't going to sweep the corridor, what happened?

A. I was in the broom closet when I told him that . . .

Q. You are indicating the storage area at the end of 3C north?

A. That is where I was, where they store the mops and buckets. . . . I told him that I was not going to mop the floor, I was sick of it. He told me to do it and I refused. He grabbed me by the back of the shirt in the storage room and tried to drag me out. He pulled me back, he let go and then I fell. He punched me first of all and then kicked me.

Q. What did he punch you with?

A. His fist.

Q. Where did he punch you?

A. On the arm and chest. I went back and I fell to the ground. He kicked me and punched me some more.

Q. He kicked you with his boots?

A. Yes.

Q. Where did he kick you?

A. On the chest and I went back and fell to the ground.

Q. How many times were you punched?

A. Four times, four or five times.

Q. How many kicks?

A. Two or three.

Q. Was there anyone in the closet or in the immediate vicinity besides yourself and the correctional officer?

A. No, everybody was locked up.

Q. Did you do anything to the correctional officer? Did you attack him in

any way?

A. No. . . .

Q. You fell to the floor and you were kicked. Then what happened?

A. Then he says, "Are you going to do it", right? So I had no choice, so I got up and grabbed the mop and I did it.

Q. And what injury did you receive as a result of this?

A. Bruises.

Q. Bruises, how many?

A. I figure I had four bruises, three or four bruises.

Q. Located where?

A. Located along here, on the arm.

Q. Is that your left arm?

A. Yes, and I think I had one on the back of the shoulder.

Gray said that he did not discuss the matter with anyone but a couple of inmates he was with. He never requested to see a senior officer, nor did he attend for any treatments. "I just let it be. I did not figure I would get anywhere by doing it, so I just did not bother. I was not dying, so I just let it go."

Q. What about the Superintendent's parade, did you see the Superintendent on parade?

A. No.

Q. You know that you are able to do that?

A. Yes.

Q. You did not feel that that would be a good idea?

A. No.

EVIDENCE OF JOSEPH B. PAAR

This correctional officer, age 53, was born in Poland. He was 6'1" in height and weighed 255 pounds. He commenced his employment with the Toronto Jail in 1965. At the time of giving evidence he held the rank of C.O. 2. Prior to becoming a correctional officer he was a security guard for two years; he had also been an auxiliary policeman with the Metropolitan Toronto Police. He had taken a five-week course at Guelph in 1965.

Paar said Gray "created quite a bit of interest. Yes, I think many officers will remember him. For one, he escaped, which is not very good . . . we called him 'Road Runner Gray'."

The records show that Paar was working in the corridor where Gray was in custody. As for taking Gray into the broom closet, he stated: "I think it is a complete fabrication on his part. I have never had any physical contact with any inmate in anger during my stay at the Toronto Jail, so he would not have been an exception, and I am very positive I never had any physical

contact with the fellow.”

MR. MCRAE. You don't recall having any problem getting him to sweep the corridor?

A. If he was a corridor man he probably would have had to sweep the corridor . . . if it had been his obligation, and he would not want to do this, all he would have to do is tell me, “I don't want to do this”, and we would have him replaced. I would have had him replaced but there was no reason for anything of this nature here if all it was was that he refused to sweep. . . .

Q. Are you saying really you can't even remember being in 3C?

A. Oh, I was in 3C.

Q. No, but Gray?

A. That Gray was there, I cannot remember. No, sir. I should say he could very well have been in 3C. He could very well have been in the corridor but this is a daily occurrence, you know, in those months. I personally always try to erase it out of my mind any occurrence that comes on during the work in the jail, so does probably everybody else. . . . If there was any altercation of this kind, I certainly would have remembered it, but I'm very sure, I'm positive I did not have any altercation. I don't see why he has come up with this stuff.

On the matter of his being named by Gray, Paar was questioned further:

MR. BRYANT. Mr. Paar, have you any idea why Mr. Gray might name you as being the person who assaulted him in the broom closet?

A. I've no idea, sir.

Q. You heard the description of the blows that he said you struck him with, a pretty vivid description?

A. Yes, it seems to me, yes.

MR. CARTER. Mr. Paar, have you worked in all of the areas of the jail, both the old and the new section?

A. Pretty well, yes, sir.

Q. Are you assigned to any one area on a regular basis, the last six months or a year?

A. No, sir.

Q. So you would move all around these various areas?

A. Yes, sir.

Q. And during the course of moving around would you have contact with virtually all of the inmate population of the jail?

A. That is correct, sir.

There is only the evidence of Gray and the denial of Paar on the allegation that Gray was beaten in the broom closet by Paar. Having heard both witnesses and watched their demeanour, it is difficult to come to a definitive finding one way or the other. In Paar's favour, however, is the fact that over a 10-year period he was not named by any other inmate in connection with any other allegation. Also the evidence of Gray in connection with other matters indicated that he was not the most reliable of witnesses.

Further, Mr. Carter brought out in his cross-examination of Gray that he

had an opportunity to complain about Paar's alleged misconduct, but did not avail himself of it.

MR. CARTER. Now the lieutenant would come around from time to time during the day, wouldn't he?

GRAY. Yes.

Q. He would make regular visits?

A. Not regular. He comes around from time to time.

Q. And when he would come around you would be out of the corridor doing your chores?

A. Sometimes I met him and it depends on when he comes up.

Q. But you would have an opportunity to speak to him alone when he came up?

A. Yes, I could – not alone but through the bars.

Q. So if you were outside the corridor?

A. Outside the corridor?

Q. You would have the opportunity to speak to him without anyone else hearing?

A. Yes.

Q. Do you recall who the lieutenant was that was on duty at that time?

A. No, I don't recall who it was.

Q. Did you go up to him and tell what happened?

A. No.

Q. Why?

A. I didn't figure it would do me any good because the time before that I tried it and I got nowhere, so I just let it go.

Q. And then the following day there would be the Superintendent's parade?

A. You put a request in to see the Superintendent, yes, but I didn't bother.

Q. But you didn't bother.

A. Like I said, I tried it before and nothing happened, so I didn't bother doing it any more.

I think the conclusion would be that Gray did not consider the matter too seriously, if it did in fact happen. The complaint that nothing would be accomplished by seeing the Superintendent was voiced by other inmates, but was without foundation in fact.

3. Third Allegation

Gray related another complaint: "We weren't tired and we couldn't get to sleep, and he come by and I was curious as to what time it was. Right. So I said – I yelled out to him – I didn't yell – when he was passing by the door, I says "Guard, do you know what time it is?"

Q. Where would he be?

A. Passing by.

Q. The cell doors are locked?

A. Right.

Q. Yes.

A. He come with the flashlight and I asked him what time it was, and he said "Shut up in there." Right? And I said "What do you mean? All I did was ask you what time it was." Right? So I guess he figured I was disturbing the inmates by talking to him at twelve o'clock at night, so he opened the door, and as soon as I got out of the cell door, he slapped me in the face. Right? And he told me to get down to the end of the corridor.

Gray identified C.O. 2 William Stafford as the one who slapped him in the face. He said it was "just once" with an open hand.

He said that another correctional officer, whom he could not identify, gave him a punch in the stomach and a clip on the back of the head. He stated that the other correctional officer said, "Ah, this guy here, he is screaming and hollering at twelve o'clock at night."

A. And I said, "I just asked you what time it is" . . . later on I was taken from the grille here, right, out onto the other side here, and I was trying to explain to him, "Look, you don't need to get upset, you know, I was only asking what time it was", and so that is when they both started punching me . . .

Q. Who punched you and kicked you?

A. Both of them.

Q. Yes?

A. Now this is both of them now, and they punched me and kicked me. Right? I was trying to defend myself, and I grabbed one of the officers by the leg, like he was punching me, and I tried to defend myself, and he sort of went off balance, right, and I let go of his foot and he didn't fall but he went off balance. He got a little upset there, and he really started pounding at me, and I hit the floor. He hit me and I hit the floor and they both started kicking me, and from there they dragged me downstairs to 9 and 10 corridor, and they were going to lock me up in one of the cells in there, and I refused to go in there and I said, "I want to go back up to 11 corridor where I was." Right? And he says "You're not going up there; you're making too much racket", and I said, "Well, I'm not going in there", so they put me in segregation cells.

Q. Did you fight with these correctional officers or attempt to hit them in any way?

A. Oh, well, I was blocking his kicks. Right?

Q. Right.

A. Kicking in self defence, right, and I tried – I was putting my hand up blocking his kick, sir, and knocked him off balance, and he got mad and come at me, and I hit the floor and he started kicking me.

At the time of the midnight occurrence there were 12 correctional officers on duty at the Toronto Jail. The night shift is considerably smaller than the other two shifts since the inmates are sleeping most of the time. The inmates are locked in their cells and there is therefore hardly any traffic or activity,

so each correctional officer is able to patrol more than one corridor.

The corridor logs for Sunday, September 8, showed that at 11:10 p.m. Gray was out of Corridor 11 and placed in Corridor 10. This entry was signed by Stafford. A segregation log entry made by C.O. 3 Arthur Kennedy indicated that at 12:02 a.m. Gray was transferred from Corridor 10 "at own request" to segregation. The 2B segregation log for September 9 indicated that at 2:40 p.m. Gray was released on bail. Evidence indicated that the bail was furnished by an aunt.

There is no doubt that Gray was causing a disturbance in Corridor 11 and that Stafford was justified in transferring him to Corridor 10. Gray objected to this move and there is some conflict in the evidence as to whether he asked to be placed in segregation if he could not be returned to Corridor 11, whether he was placed in segregation by way of punishment, or whether he had uttered some flippant remark which indicated that they might as well place him in segregation rather than put him in Corridor 10. In any event, he was not charged. There was no Misconduct Report.

The three possible reasons for putting an inmate in segregation are: (1) misconduct, (2) his own request – this usually occurs when an inmate is upset and cannot tolerate the noise or the company of other inmates in a corridor and (3) for his own protection, when he is charged with, say, a heinous crime looked down upon by the other inmates or has informed on other inmates.

If Gray was indeed transferred at his own request to segregation this would explain why no Misconduct Report was made out.

Gray indicated that both segregation cell doors were closed. If this was the case, it was unusual for an inmate who was in segregation at his own request. It is not even the common practice where an inmate is in segregation as a result of misconduct, unless he is causing a disturbance.

A. No, I was not asked if I wanted to go into segregation.

THE COMMISSIONER. When you were led out of 10 corridor, were you told where you were going to go?

A. No, well, he says, "If you don't want to go in this cell, we will find a place for you then", and he put me in segregation.

Q. Yes. Now, you did say that you were not fed in the morning?

A. That is correct, or the afternoon.

Q. How did that happen?

A. I have no idea. When I was in the segregation cell there, on 2B corridor . . . they have two thick doors. One puts you in there about 4 inches thick, and then the next one, it is the same, 4 inches thick, and it is just about impossible for a guard 20 feet away, 10 feet, to hear you if you are banging trying to get attention. I was doing this and I was wondering what time it was because, when you're in segregation, you don't know what time of day it is. The only way you know how is by your meal. You get your breakfast and you know it is somewhere around 8:00; and when you get lunch you know it is somewhere around 12:00, but I was not fed in either the morning or the afternoon so I'd no idea what time it really was. So I was trying to get the guard's attention, to let me know if I missed anything or what time it is. But I

could not get his attention. Then about 2:00 the door opened, the first door opened, then the second door opened, and he says, "Get dressed, you are going home." I says, "What time is it?" I thought maybe it was 7:00 in the morning because I never got fed for breakfast yet. He says, "It is 2:00 in the afternoon." I said, "How come I did not get fed? I did not get fed all day." He said, "Don't blame us", he says, "it is the kitchen's fault. They must have forgot about you down in the kitchen." He says, "It is not our fault, it is the kitchen's fault." So I just let the matter go and I got bailed out.

With reference to Gray's allegation that he did not receive breakfast or lunch while in segregation, the log for 2B segregation indicated three inmates in segregation as of 7:00 a.m. and three meals served with two spoons.

The lunch entry at 10:42 indicated two full meals and one restricted diet meal served. At 10:55 C.O. 2 Thomas Davey noted his visit, and also that "Gray has not touched meal yet". The 11:10 entry, also by Davey, was as follows: "Paper dishes and two spoons out. Gray did not eat or drink."

From the segregation log record, one would have to question Gray's statement that he was not provided with food and that he had been told that the reason was that there was some fault in the kitchen and that someone in the kitchen had forgotten about him.

Throughout the inquiry, Gray was the only inmate to complain of not being fed in segregation. There were, on other occasions, admissions by inmates that they had rejected food provided to them in segregation.

As for the allegation against Stafford:

MR. CARTER. Now this third incident, when you were in 11 and 12 corridor, what time was it when this occurred? Was it around midnight?

A. Somewhere around there, yes.

Q. And the cells were locked, is that right?

A. Yes.

Q. Lights were out?

A. Right.

Q. And you were really supposed to be asleep?

A. Yes.

Q. And there would be how many inmates in this corridor?

A. Four to a cell. There were how many cells? Eighteen. . . .

Q. You didn't hear any noise, did you, from any other cell?

A. No.

Q. All right. And then you heard the officer come in to check and you shouted out to him and you say you asked the time. Is that correct?

A. That is correct.

Q. Did you ask anything else?

A. No. . . .

Gray said that the other three in the cell with him were awake and talking but he was the only one to be taken out. He was taken to Corridor 10 where there was one inmate per cell. He said he did not want to go to Corridor 10 because he had no friends there.

Q. You were told to go into 10 corridor, and you refused?

A. That is correct. I don't know if I refused to go in, or while I was there I refused to stay, but I refused.

Q. If you went in and refused to stay, how would you have done that?

A. Just — I'm not staying there any more.

Q. Well, just tell me how you can refuse to stay. There are locks on these corridors are there not?

A. Yes. . . .

Q. How can you refuse to stay there?

A. You just start screaming and hollering.

Q. You could start screaming and hollering and wake everybody up?

A. If nothing else works, that is how some inmates go about it.

EVIDENCE OF WILLIAM PAUL STAFFORD

C.O. 2 Stafford said he was the officer on duty on the night shift, September 8, covering Corridors 9, 10, 11, and 12. He stated that there were inmates in all four corridors. He was the only officer in charge of these corridors that night.

He said Gray was removed from Corridor 11 because he was making noise in the cell, "laughing and carrying on . . . you try to quieten them down. He was rather persistent so I told him to come out." He said that he went into the corridor to remove Gray and that normal procedure would be to have another officer cover him.

He stated that there were three or four to each cell in Corridor 11. He took Gray out of that corridor and placed him in Corridor 10 in a single cell where he would be by himself, "so he would cut down on the noise".

Stafford stated that Gray sat on the bunk, "and I passed a few times during my patrols". I asked him: 'Are you not going to lie down?' He said, 'Well, if I can't go back to 11 Corridor, I want to go to the hole.' So, I got in touch with Mr. [C.O. 3 Arthur] Kennedy who is the chief, and Mr. Kennedy escorted him over to the segregation area."

MR. MCRAE. Now, when he was taken from his . . . cell on 11 Corridor, . . . he alleges that you smacked him in the face, that as he was taken out through the grille, that the other officer who was assisting you punched him in the stomach as he went through, and then this other officer gave him a clip on the back of the head. . . . Could you have hit him?

A. I possibly gave him a shove in the corridor to speed him up. I don't think I struck him.

Q. Just a bit of a push to speed him up?

A. Yes.

Q. Well, what do you remember about it?

A. Nothing. That's just what puzzles me. I didn't even know who he was until

I saw him. If I had assaulted him, I wouldn't have had any difficulty with him, I would have remembered him.

There were other allegations against Stafford of the use of force on inmates and in light of this his answer that if he had assaulted Gray he would not have difficulty remembering him appears to be something less than a denial of ever having assaulted an inmate, such denials having been made by other correctional officers.

MR. MCRAE. You remembered him sitting on his bunk in 10 Corridor; you remembered the conversation you had with him later. I think you remember this a little better than you are indicating?

A. No, I don't. I can talk to hundreds of inmates in the week, sitting on the edge of their bunks. I couldn't possibly tell you I recognize their faces next week.

Q. You are sure you don't have a selective memory, with respect to this incident?

A. I do not have a selective memory.

Q. You remember him sitting on his bunk in 10 corridor?

A. I remember an inmate sitting on a bunk.

Q. The record indicates he was the one that was taken from 11 Corridor, that he was the one that was taken to 10 Corridor, and to 2B segregation?

A. Correct.

Q. And you recognized him?

A. I recognized him from Friday, but I didn't recognize him from September.

Q. Let's assume it is the same man, in view of the record?

A. It must be the same man, because the records state it is the same man.

Q. And it's the same man, and you remember him sitting on his bunk?

A. I don't remember that man sitting on his bunk. I remember an inmate sitting on his bunk.

Q. Do you remember going down to see Mr. Kennedy?

A. That is right, yes. Mr. Kennedy and I happened to speak about it when we came up here to give a statement.

Q. And you say it could have been necessary to push him, but other than that there wasn't anything?

A. Nothing, no violence at all, that I can remember.

Q. He didn't give you a hard time?

A. No, sir.

Q. You didn't have to give him a hard time?

A. No.

Q. Did you see him later, after he went to segregation at all?

A. No, sir.

Q. You didn't go over there?

A. No, sir.

Q. He was not charged?

A. No, he went on his own request, as far as I can remember. When a man asks me if he can go to segregation, I see my senior officer, if there is room for him to go to segregation, then we try and go there.

Stafford stated that the reason no charge was laid was because Gray went at his own request. Stafford was also questioned about a time discrepancy in his entries, for he indicated in the Corridor 11 log that it was 11:10 when Gray was removed and in the Corridor 10 log that it was 11:25 when Gray was admitted there. The entries for Gray's removal to segregation and his admittance to segregation also contain a discrepancy. Kennedy's entry in the segregation log indicates admittance at 12:02 and the Corridor 10 log indicates Gray's removal to segregation at 12:12, although there was a writing over which indicated 12:02. "It could be a discrepancy in the time. It could be my error, yeah, oh, the way I put it down in the log book. It is not necessarily right at that time. It could be a discrepancy in my entries in the log book."

Stafford said that it was possible that if Gray was not happy about going into Corridor 10 he might have been disturbing other inmates sleeping in Corridor 10. When he was asked if this might not be a reason for Gray being transferred to segregation, he replied, "To my knowledge, the man at that particular time was not making any noise in 10 corridor."

Although the 2B segregation log indicates a transfer to segregation "at own request", on the evidence there is some doubt in my mind whether this was in the nature of a true request, or some expression of pique on the part of Gray.

I do not accept Gray's evidence that he was not provided with meals while in segregation.

I believe that Stafford acted properly in removing Gray from his corridor for disturbing other inmates at night, and that the same officer was further justified when Gray would not settle down in the second corridor in reporting the matter to a senior officer. Although there is some doubt about the true nature of Gray's request for segregation, I am of the opinion that his potential that night for continuing to disturb other inmates warranted his removal to segregation.

No Misconduct Report is made out when an inmate voluntarily goes to segregation. A full investigation should be conducted by the Superintendent, however, in a manner similar to a misconduct hearing, to ensure that there has been no abuse and also to obtain a reading of any underlying cause. These should be available for review by the proposed Toronto Jail Council.

As for the use of unnecessary force, I am of the opinion that there was some, by Stafford, but that it was of a minor nature.

4. Fourth Allegation

Gray indicated that he was struck by C.O. 2 Thomas Davey at the time he entered segregation and he was quite definite as to his identification. When it was shown that Davey was not on duty at the time, but was working in the segregation cells at the time of Gray's release, Gray shifted his ground

to indicate that it was at that time that Davey had struck him. This illustrates one of the problems encountered throughout the inquiry – unsubstantiated allegations against officers.

C.O.2 Davey had been on the staff of the Toronto Jail since 1969. Prior to that he had served eight years at the Algoma District Jail in Sault Ste. Marie. He was 6'1" and weighed 160 pounds.

He stated that after he had worked for five months at the Algoma District Jail, the Superintendent issued a list of 80 questions pertaining to duties. "We had to put all these answers in writing, and then the Superintendent would correct them and go over them with us and point out any errors we had made."

Davey denied that he had assaulted Gray when Gray entered segregation. He said he was not on duty in the jail at that time. He remembered Gray being in segregation. He said Gray's release from segregation was in his handwriting. He denied striking Gray upon his release, stating, "If I was inclined to strike Gray I most certainly would not strike him when he was going out on bail."

One can imagine some reason that might prompt a correctional officer to strike an inmate going into segregation. One can hardly understand why a correctional officer would strike an inmate who was being released on bail and could immediately report the incident to someone outside the jail and show evidence of injury.

Because of Gray's inconsistent evidence, and the element of improbability, I cannot accept the allegation that Gray was struck by Davey.

The Jinks Allegation

"He was obsessed with his shirt, you know, the juice being spilled on it . . ."
(Gary Dassy)

"I told him if he was going to do something like that, then take the person into the segregation area or in the elevator . . ." (Gary Dassy)

"I asked him what happened to 'surgery' and he said, 'You were not here when I called it.' I says, 'I was standing right here,' I says, 'I am not invisible.'" (David Jinks)

The Jinks incident came before the Commission as one of the allegations made by Gary Dassy.

EVIDENCE OF GARY DASSY

Dassy said that in the latter part of July 1974 he had been working from 4:00 a.m. to 5:00 p.m., which involved overtime.

A. I cannot remember which side I was on that day. I would then get them up —

they would wash, dress themselves, make their beds up – and then go down and lock the cell doors, and then at six o'clock or thereabouts in the morning breakfast would be served to them. They would eat their breakfast, by this time it is twenty after six. The nurse would come around with medication for those inmates that were on medication before going to court. And at that time I would leave to have a cup of tea before resuming on the day shift at 6:45. After that I would be assigned to a corridor until nine o'clock when I went to "visits", which involves running, bringing inmates to visit with lawyers, social workers, what have you, and getting people for X-rays and that.

MR. BYNOE. The first part of your duties then was spent . . . getting prisoners ready that were going to court that particular day?

A. Yes, sir.

Q. And then you took over the duties of . . . escorting inmates from their cells to a visiting area and then back?

A. Yes, sir.

The Jinks incident occurred on August 2, 1974, at approximately 8:30 a.m. Dassy said that he was on Corridors 3 and 4 of the old section of the jail at the time. "I was standing at the grille when [C.O. 3] Sam Barrett came by, came out into the rotunda and said to me, hollered up to me, 'Gary, get over to 3A, there is trouble over there.'"

Corridor 3A is on the third floor of the new building, and Dassy stated that in order to reach it from Corridors 3 and 4, on the second floor of the old building, "I would have to come down the stairs to 1 and 2 in the old building, through the rotunda, over to 7 and 8, down the stairs to the basement, along the basement corridor . . . to the new jail, get the man that is on duty in the kitchen to open the elevator for me because that requires a key which I do not have. And I would go up to the third floor."

Dassy said that when he got off the elevator he turned towards Corridor 3A, which is normally separated from the landing by a solid door. He observed a group of inmates "around the top part of the corridor range, as they call it, in the new part".

Dassy stated that "there was a lot of hollering going on between the guards and the inmates and I do not know if I can use the language in here."

MR. BYNOE. Perhaps you had better use the exact language.

A. First of all, as I come up the elevator there was inmates that could see me, and one of the inmates, I believe it was Huntington, said "Oh my God here comes Dassy." At the same time there was this hollering and screaming going on which I could not see, involving the inmate David Jinks and a guy by the name of Clarke.

Dassy said that others present at the time were C.O. 2 Reginald Dunning and C.O. 4 Robert Nuttall. He stated that he heard C.O. 1 Clifford Clarke say to Jinks, " 'Look what you [deletion] well done to my clean shirt', mean-

ing that Jinks had knocked the juice off the bars in the range and had splashed it on Clarke's clean shirt."

MR. BYNOE. You heard these words that you have described. Now would you describe what you saw?

A. Jinks . . . came out into the landing with Clarke. Sergeant Nuttall was still in the range trying to calm down the rest of the inmates. By this time there was four, maybe five, other guards that arrived off the elevator after I arrived. Clarke had Jinks up against the wall. I believe it was in front of this visiting room here. . . . Jinks was standing up against the wall with his back to it in a military position of at ease, with his hands clasped behind his back. Clarke was screaming at him that he was going to —

Q. Use the exact words as best you are able to recall them.

A. He was going to kill Jinks for knocking the juice onto his shirt.

Q. Those could not possibly be the words that Mr. Clarke used?

A. No.

Q. As accurately as you can relate the words. We know these are not your words but words that you are attributing to Mr. Clarke.

A. "You [deleted] idiot, look what you have done to my clean shirt", and going on in a very upset manner . . . at Jinks. Jinks was trying to apologize, saying it was an accident and that all he had wanted was a surgery request because he had an abscessed tooth and the nurse on the afternoon shift on the previous day had told him to put in for that request that morning. Jinks missed the surgery request before breakfast because he was still asleep and Clarke was not about to make one out for him regardless of what was the matter with him. . . . Jinks then told me, or said as he turned to walk away from the bars, he was hot, meaning that he was upset, over not being able to get his surgery request and that his arm hit the bars and knocked the juice onto Clarke's shirt and that it was an accident.

Q. No, I am not quite clear, where was Mr. Jinks when he told you that?

A. This is what was being said to Clarke and later to myself, personally.

Glasses of juice were placed between the bars, there being sufficient width on the crossbars to support glasses.

Dassy stated that Nuttall was "in the range" calming down the inmates. He stated that "Mr. Nuttall has a way about him with words . . . he can more or less appease the inmates by his manner in which he can talk." This assessment of Nuttall confirms other evidence of his ability as a correctional officer.

As to what was happening between Clarke and Jinks, Dassy said, "Clarke had Jinks up against the wall and then Clarke started to punch and knee Jinks. He was punching Jinks and kneeling him at the same time around the groin area, it looked like, but I don't know if he landed any blows there because Jinks was trying to protect himself by turning sideways and Jinks was screaming that he had had an operation for — shall I say it? —

Q. Yes.

A. For bullet wounds.

Dassy said that Clarke "had his fist clenched and he started to punch Jinks around the body and face and at the same time bring his knees up into the groin area".

Dassy took the keys from Dunning, who had been working the third-floor landing, and locked the solid door leading to the 3A range "so that the inmates could not see what was going on". In doing so he locked Nuttall inside the range without having conferred with him or receiving his instructions. Indeed, it appeared from the evidence that he had not discussed the advisability of his action with Dunning. Dassy said that Dunning "was still pretty shook up or upset . . . he seemed to be at a loss of what to do".

Dassy said "Mr. Dunning is the type of person who was very easily upset. I would call him a hypochondriac. If I said I had a cold, 10 minutes later he would be going home with a cold, or somebody said he had the flu, he would have the flu, type of person."

During the inquiry there was no other reflection on the ability of Dunning to carry out his duties. From other evidence, I have found Dunning to be a conscientious correctional officer. I was rather impressed with his habit of keeping a daily notebook. This is a procedure that I recommend should be followed by other correctional officers, much in the manner of a police officer's personal Occurrence Notebook.

Dassy said that after the door had been locked Jinks "was on the floor and Clarke was above him still hitting and kicking him, saying you [deletion] idiot, look what you did".

A. He was obsessed with his shirt, you know, the juice being spilled on it, and Jinks hollering back that he had had an operation and please don't hit him, it was an accident, he did not mean to spill the juice; and at this time I stepped in between, trying to get Clarke off, and Clarke, in his rage, I guess it was, struck me in the face . . . Clarke, after seeing that he had hit me, sort of calmed down and at this point I got Jinks up and took him around and into the segregation cells. . . . I did not have him strip or anything. I just put him in there to get him away from Clarke. Then I asked Jinks to tell me what had happened again . . . and he related the same thing I had heard . . . that it was an accident and he did not mean to knock the juice over even though he was upset at not getting the surgery request, but it was an unintentional act as far as the juice went. While all this was going on Sergeant Nuttall was screaming to be let out of 3A because he could hear what was going on.

Q. He could hear something?

A. Yes, and the inmates were making quite a bit of racket because Jinks and Clarke were both hollering. It was quite audible in that area.

Q. Now, then, after you had spoken to Jinks in the segregation area, what if anything did you do?

A. I could hear Sergeant Nuttall hollering to let him out – you know, "Let me out, what is going on out there", and . . . so I went and I let Sergeant Nuttall out and relocked the door again and Sergeant Nuttall started talking to Clarke.

Q. What happened then?

A. He asked Clarke what had happened, and Clarke admitted hitting Jinks.

Q. Do you recall what was said? Do you recall the words?

A. I don't recall . . . the exact words . . . I know he was very upset at what Clarke had done. I do recall what I said to Clarke . . . I called Clarke a damn or bloody idiot for hitting Jinks in front of inmate witnesses on the 3B landing. I told him if he was going to do something like that, then take the person into the segregation area or in the elevator so that . . . it couldn't be heard or witnessed by people who shouldn't have seen what was going on. And Clarke – it didn't seem to sink into Clarke what I was saying. . . .

Q. Am I to gather from what you say that you told him that he hit the prisoner at the wrong time and in the wrong place in the wrong way, and he should not do it like that?

A. Right, sir.

This indicated rather characteristically Dassy's approach to correctional work. Dassy may also have interpreted this as being in keeping with jail policy. As to there being any justification for such interpretation, one has to consider all of Dassy's allegations of excessive use of force. There certainly was no jail policy that inmates could be beaten, as long as other inmates were not witnesses.

Dassy said that, after the episode, Nuttall was going to assign him to 3A because Clarke was still upset over the matter, and when Dassy told Nuttall that he was on "visits" Nuttall assigned another correctional officer to 3A. Clarke was apparently put on hospital escort and surveillance duty for the balance of his shift. This was a good move, for no matter where the fault lay the incident had upset Clarke and he would not be able to function properly as a line officer while in this state.

The 3B log indicated that Jinks was entered into segregation at 7:20 a.m. by Nuttall.

Dassy was asked if Clarke had told him that Jinks threw instead of spilled the juice, to which he replied, "He would probably have said throw, sir."

Dassy's opinion that the juice was spilled rather than thrown was not supported by anything he had observed. In the Jinks episode, Dassy was quite biased in favour of Jinks, saying, "Jinks was a very mild person in jail, he got the *Globe and Mail* in the morning and read it, he got the *Star* at night and read it. But then you've got to understand that inmates have two personalities, the one they use in the street and the one they will use in jail to gain extra favours, for want of a better word, con the correctional officers. I don't know what Jinks was like out on the street but I do know that in the jail he was a very quiet, mild-mannered person and had never to my knowledge given any trouble to any guard."

He believed Jinks was telling the truth when he said it was an accident. He said that he heard later that Jinks was charged and found innocent of wrongdoing and released from segregation.

This is not accurate, for Paul Mulhern, the Assistant Deputy Superintendent who heard the charge, found Jinks guilty of using profane language and sentenced him to three days incarceration to date back to the time he was put in segregation. The hearing was on Sunday, August 4, when the misconduct came to the attention of Mr. Mulhern. That was the third day. Of course it is difficult to find someone innocent who has already spent three

days in segregation.

Mr. Mulhern, cross-examined by A. I. Posluns, solicitor appearing for Jinks, said he believed Jinks had initiated the profanity and that there was possibly a follow-up from Clarke. He said that the secondary charge of conducting himself in a manner detrimental to the welfare of other inmates or of the institution program was dropped as he did not find sufficient evidence that Jinks had thrown the juice at Clarke. He admitted that no charges were brought against Clarke.

EVIDENCE OF DAVID JINKS

This inmate was 36 years of age at the time he gave evidence. He was an inmate of the Kingston Penitentiary, serving a total of seven years for robbery and wounding. Jinks went as far as Grade VIII in school and his police record dated back to 1954 when he was 15. To his credit there were two periods each of five years when he was steadily employed with one employer. He looked like quite a responsible citizen. He did, however, exhibit some nervousness since there were further charges pending against him. At the time he gave evidence, a direction was made that in the media there should be no mention of the fact that charges were pending.

The incident involving Jinks occurred on August 2, 1974. Jinks gave evidence before the Commission on February 10, 1975. He stated that he was in the Toronto Jail from February 21, 1974, to January 3, 1975. This is another example of an inmate remaining at the Toronto Jail for a period much in excess of the average of 10 to 14 days.

Jinks was first in 2 hospital dormitory for six weeks. He was then in other sections of the old part of the jail. From May 1974 to August 7, 1974, he was in 3A North in the new wing. His medical records and his own evidence indicate that he was on Valium for "bad nerves", and that he also had trouble with his teeth. He saw the jail doctor frequently and was on tranquillizers.

Jinks identified Clarke from a photograph.

As to the events leading up to the incident, Jinks stated, "He [Clarke] called 'surgery' as he got off his chair and went to the other corridor. I stood there."

MR. MCRAE. You mean corridor 3A South? . . .

A. I waited until he came back and he walked by, went out to where the elevator is . . . He came back in with the breakfast wagon and pulled it over to where I was standing. I asked him what happened to surgery and he said you were not here when I called it. I says, "I was standing right here," I says, "I am not invisible."

Q. Had you spoken to him when he called "surgery"?

A. No. He just got off his chair, yelled "surgery", and went in the other

direction. It seemed to me like when I usually put my name in for surgery, the man stands right there with the request and that is it. You give your name, what your problem is, and that is the end of it.

Q. You mean you write it down?

A. Yes. He had done it a little different. He came back in with the wagon and I had asked him about surgery. He told me I had missed it, I was not there. I said I must be invisible and he went about taking the trays off the breakfast wagon and handing them through. I says, "Am I going to get my name in for surgery?" He says, "No, you are too late."

Jinks said that the conversation with Clarke occurred about five minutes after Clarke had first called "surgery".

A. I told him that I had a toothache I wanted to put my name in for it and he said, "You are too late." At that point I was a little, I would say, upset. My hands at the time were on the bars and on these bars there is juice. In my exasperation my hands came down like that which caused a couple of the glasses to go off the bar. I had turned away at about the same time. By the time I got back I heard it hit the floor and I had a small picture in my mind where the glass ended. And when I looked the guard was going like this.

THE COMMISSIONER. You are indicating he was wiping off the front of his shirt.

A. Yes. And as I looked I could see the reason – obviously the juice had landed on him.

MR. MCRAE. What kind of juice was it?

A. To me it looked like lemonade.

The glasses holding the fruit juice were three- or four-ounce plastic glasses. Jinks said that two other inmates, Ferguson and McNamara, were also waiting for surgery in 3A. "I recall [Ferguson] saying . . . that he had missed surgery too."

On the question of whether Jinks deliberately threw the juice at Clarke:

MR. MCRAE. You have described for the Commissioner how your hands went down and juice spilled on Mr. Clarke. Did you throw juice at him deliberately?

A. No.

Q. But did you knock it not caring where it went?

A. I was not aiming for it, just when I come down like that they hit the bar. It is just the way they are set up on the bar.

Q. But you only hit one glass?

A. Yes.

Q. What was Mr. Clarke doing when he got hit with the juice?

A. Well, I turned around with one motion and in turning it dawned on me that when I heard it hit the floor, and, when I looked, he is going like this. When I look closer I can see that he has got it all over him. . . . I said to myself, well, juice has hit the man, it has either hit him in the face or hit him on the chest from the way he is wiping.

Q. Could it hit him in the face if you accidentally knocked it over?

A. I thought about it. After, I tried to figure it out, but the point was he got the juice on him.

Q. Do you understand my question? How could you hit him in the face if you just accidentally tipped it over?

A. It was the position that he was taking the trays out of the wagon, he would have to bend over when he was putting it through. He would be in a crouched position. . . .

Q. Would you tell us what happened after Mr. Clarke got covered in juice?

A. Yes. After he stopped, he looked at me.

Q. After he stopped wiping himself?

A. Yes, and he asked me to come out . . . He said: "Come out." I said: "Okay, open the door." And he walked towards the door. I turned around and walked towards my cell. For two reasons. One, I was a little unsure of the situation. The second was I had better put some clothes on.

Q. What were you wearing at the time?

A. My pyjamas.

Q. Go ahead.

A. I entered my cell, number 8, and I took out a cigarette and lit it; and before I got a chance to really decide what I was going to do, I heard a lot of yelling.

Q. Yes, just go ahead.

A. I proceeded out of my cell, and there was a few inmates gathered there, and Mr. Clarke was outside the bar, and when I got close, Mr. Clarke said to one inmate: "Not you, him," pointing to me.

Q. . . . So when you got out of your cell, Mr. Nuttall and Clarke were in the guard walk, right?

A. Yes, I walked by the inmates and proceeded to the grille, that would be the door leading out of the corridor . . . Mr. Nuttall said to Mr. Clarke, "You had better go down to the laundry room, or go downstairs" — something about the laundry room, I believe, and get something, a shirt or something to take the place of the one that he had on. And Mr. Nuttall took him out. I didn't even see who opened the sallyport. It opened anyway and I went out, out in the corridor towards the elevator area . . . Before I went out the sallyport, a whole bunch or a group of men appeared at the doorway at the elevator . . . guards . . . correctional officers . . . From where I was it looked like a group consisting of, from my point of view, five or six. I couldn't see how many was behind that point. Mr. Nuttall turned around and asked them, "Who called you people? Go back to where you came from." Then he turned around and said I could come out. . . . I went out to where the elevator area is, through the door . . .

Q. Were you escorted out, taken by the arm or anything?

A. No, I had the feeling there was somebody behind me, but it didn't really matter, I was asked to come out so I gathered coming out meant come out here.

Jinks's evidence was that Nuttall remained in the corridor. He was asked the names of correctional officers who were present and he named C.O. 2 Charles Casey, C.O. 2 Reginald Dunning, and C.O. 1 Victor Ayre. He said that Dassy was not present. Evidence was produced to show that Casey was on sick leave. I am of the opinion that Jinks was attempting to give evidence in a forthright manner and that he confused Casey with Dassy.

MR. MCRAE. What about Mr. Clarke?

A. When I got against the wall with my hands behind my back, the way I am standing now, I noticed that Mr. Clarke came walking out, stopped, and said to me —

Q. What were you wearing at that time?

A. My pyjamas.

Q. On your feet?

A. In my socks. Or stockings.

Q. Okay.

A. He says to me, he says, "*Your* nerves are bad?" He says, "*Look at mine!*"

Q. What were you doing at the time?

A. Looking at him looking at his hands. The first thing I know I was wearing them.

Q. Where were your hands?

A. Behind my back. He hit me once, twice, and there was a table beside me. It's not usually in that corridor.

Q. Where was the table?

A. Where I was standing here . . . He followed through with a couple of blows and I caught the edge of the table and bounced off it. The blows were still coming as I went down on the floor. I covered my head and boots were coming from different directions.

Jinks said he threw no blows himself but "more or less" put up his arms to ward off blows and then, "On my way down there was a boot in my back that coincided with boots coming to my side. So I covered up like that, and they kept coming.

Q. You say you covered your face and head?

A. Yes. At this time I am trying to stop them by saying that I got out of the hospital recently. I figured by hollering like that these other people standing there would get the idea that here's a guy that's just come out of the hospital.

Jinks said the blows from Clarke's fists were "very light. I mean, as far as blows go. They didn't break my skin or blacken my eyes. Probably because of the position where they hit me."

The above description as to the force of the blows is to Jinks's credit and was in refreshing contrast to the exaggerated complaints of some other inmates as to the severity of force used.

Jinks was unable to say who kicked him. "I was not looking for the boots coming at me. I thought I would keep my head covered until the bombing was over."

Q. How many kicks did you receive?

A. I did not count them as they were coming. I guess you could say I more or less sorted it out when I was in segregation, maybe 7 or 8.

Jinks was unable to say whether more than one person was kicking him.

A. The blows were coming so close together that I imagined that it would be more than one guard . . . I cannot say. I would say it would be more than two . . . The first one caught me in the back and at about the same time I got them in the side, about three, about one and a half in the head.

THE COMMISSIONER. What do you mean by half a kick?

A. Well, one got me on the hand, it felt pretty good. The second one glanced off my head.

Jinks did not recall being "kneaded" by Clarke, as Dassy had said. He did not recall Dassy stepping between Clarke and himself or Dassy getting struck in the face.

Jinks agreed that Nuttall had not been on the landing at the time the assault occurred.

Jinks realized that he was being put into segregation and he walked into the segregation area on his own. They were putting him in the fifth cell, the one without a bed, when Nuttall said that the toilet was not working in that cell and to put him in the first cell, which contained a bed. This could have been factually correct, or Nuttall's way of putting him into less severe quarters.

MR. MCRAE. Did you have any conversation with Mr. Nuttall?

A. I asked him if I could speak with him and he said he would be back later. He came back later. Before he came back Mr. Dassy appeared at the segregation door. I seen him there. I knew of him in the building. I could not understand why he was there. He called me by name and asked me what was going on. I was quite surprised to see that he was interested. . . . I told him that some juice fell off the bars accidentally and you saw the rest. . . . I was sitting on the bed when he came to the door. I could see him through the opening and he called me by name, Dave. He says what happened out there, what was going on? So I told him that there was juice accidentally spilled on a guard. . . . He went away.

THE COMMISSIONER. Do you know what he did?

A. It looked like he was writing something down.

The Misconduct Report, Part 1, which was made out by Clarke, was read to Jinks. Part 2 contained Nuttall's assessment indicating that Jinks was "usually a quiet inmate" and that the attack was "not consistent with his established behavioural pattern". Part 3 was Jinks's denial of a misconduct as given to Mr. Mulhern. A similar denial was made to Nuttall.

Jinks stated that this was the only time that he had been in segregation in the Toronto Jail or any other institution, which illustrates the point that the older inmates (Jinks was 36) did not usually pose behavioural problems.

Jinks denied that more than one glass of juice was involved. Clarke, in his statement, made reference to the hurling of "full glasses of juice".

Jinks said that later, on August 2, at about 3:30 p.m., C.O. 5 Vassos Zodiates came to see him. "He seemed rather concerned. So I told him that juice accidentally fell off the bars, and that is why I was in there."

THE COMMISSIONER. Why was he concerned? What was his concern, do you know?

A. I gather — I have been in the institution for a considerable amount of time. So I guess he would be concerned how I got into such a position, as I was in, in segregation.

Q. Not having been there before?

A. Yes.

MR. MCRAE. And did you discuss with him then what had happened?

A. I had a short conversation. I believe I told him what I was charged with, and I think he already knew, so there wasn't any need to tell him . . . For what sense? It wouldn't solve nothing. It's not as if I was bleeding all over the place.

THE COMMISSIONER. Do I understand from that remark, that had you been a recipient of a more physical assault, you would have complained about it; but it was the degree that indicated to you that there was no point in complaining? Is that the situation?

A. Yes, sir.

Q. In any event, you didn't complain to him?

A. I didn't, no.

On Sunday, August 4 (the third day), Mr. Mulhern came to see Jinks. "He had a file, and he read the charges to me and asked me if that was true and I told him much the same as what I told Mr. Nuttall . . ."

MR. MCRAE. And under Part 3 he has checked off: "Admitting a personality clash over breakfast, he states the juice container fell from the bars during the discussion." And signed "P. Mulhern". "Found guilty of misconduct, under regulation 23-1B. Penalty imposed three days from August 2nd. Warning about future behaviour." Is that what you were told?

A. I was told I was given a suspended sentence. He read that out to me and I denied it; and he says three days, he says a suspended sentence. He asked the guard that was at the door if I had made any noise, the guard said, no, he is not a troublesome person. He said he can go back into his own corridor. Right then . . .

There may have been a dilemma for Mulhern since Jinks had already spent two days and part of a third in segregation.

Mulhern resolved the dilemma in his own mind by sentencing Jinks for the profane language to three days, being the time spent in segregation, and then returned him to the corridor. Jinks was acquitted of the charge of conduct detrimental to the institution which, in effect, meant an acquittal on Clarke's charge that the juice was thrown at him deliberately.

From the point of view of the institution this may have been a practical solution to the problem, and it permitted a bit of face-saving. In view, however, of the decision made, which implies an acceptance of Jinks's version of the incident, had he been tried earlier, say the morning of August 2, and in view of his good behavioural record in the jail and the aforesaid possible provocation, might Jinks not have been merely chastised for his profanity and returned to the corridor?

As for the injuries sustained by Jinks:

MR. MCRAE. Did you receive any injury as a result of the alleged assault on the 2nd of August in the morning?

A. I was just sore all over.

Q. Bruises?

A. Very slight.

Q. Where were the bruises?

A. I had one on my hand, one on my side, and a great big bump on my back.

Q. Did you complain to anybody about the injuries you received in the alleged assault?

A. No.

Q. You saw Mr. Nuttall shortly after?

A. Yes.

Q. You didn't complain to him?

A. No.

Q. You saw Mr. Zodiates, and you have already told us you didn't complain to him?

A. That's correct.

Q. Your medical record indicates that you saw the doctor, I think, on the 3rd?

A. Yes.

Q. Yes. Your medical record indicates that on August the 3rd you were seen by Dr. [W.] Hills, and the only note is "Bad nerves and toothache . . ."

Jinks also indicated his opinion that the doctor was, from his past experience, a bit off-hand. "When I appear in his office, which I have before, . . . he just tells me to go back and not to worry about it . . . I wasn't going to push it because he seems like the type if he doesn't want to give you nothing he doesn't give you nothing."

Jinks's Toronto Jail medical file contained some 11 pages of entries and is an indication of the medical attention given this one inmate.

As for the validity of Jinks's complaint of a toothache, five days later it was necessary to extract the tooth.

With reference to the call for surgery requests, Jinks admitted that the procedure in the new building was that after the requests were made out they would be handed to the correctional officer at the time that the food wagons were brought up. Therefore, technically, the bringing in of the food wagon would indicate the termination of surgery requests.

Jinks cited the example of the tractability of a correctional officer who, on an occasion shortly before August 2, told surgery to "put something stronger than aspirin on the tray" for Jinks. He stated that this was done at a time other than a call for surgery requests, and as a result the nurse, after supper, brought up some oil of cloves which Jinks put on his tooth cavity.

On cross-examination by Mr. Carter, it was brought out that "the log shows that surgery requests were taken at seven o'clock" and that "juice was served about 6:55". A further notation indicated that at 6:50 Clarke had relieved Stafford at the 3A range (Corridors 3A north and 3A south).

To trace the initial cause of the Jinks episode, the fault would have to lie with Clarke for following procedure with too much rigidity. He should have taken Jinks's request even if it was after he had handed in the slips.

certainly within a five-minute period.

This is another example of an incident that, on review, proves to have been unnecessary and avoidable – even taking into account the advantage of hindsight.

Jinks admitted that up to the time he saw his name in the newspaper reports he had not “complained to a single individual” that he had been assaulted and “didn’t realize it was going to be that big”.

As to how big it became, it is interesting to note that, in addition to the usual counsel at the hearings, namely Mr. Bynoe or Mr. McRae, Commission counsel, Mr. Carter or Mr. Evans representing the correctional officers other than Dassy, and Mr. Salem or a member of his staff representing Dassy (and by this time also Miss Mannerholm), there were three additional counsel present during the hearing of the Jinks episode. The inmate whose case was being heard had the right to be represented by counsel, but this right was rarely invoked. Much less often was there counsel for any witness. In this case, Jinks and inmate witnesses LeSarge and Huntingdon were all separately represented. The total number of lawyers appearing in the Jinks matter was therefore six. When one added to this the Commissioner, the Commission Registrar, official shorthand reporters, media reporters, court constables, Commission investigators, and Toronto Jail personnel (together with some members of the general public) it is little wonder that Jinks said that he “didn’t realize it was going to be that big”.

EVIDENCE OF CHARLES GORDON FERGUSON

The evidence of inmate Ferguson corroborated the evidence of Jinks that Clarke had not allowed sufficient time, after calling out “surgery”, for the inmates to put in their requests. Ferguson was also told when he requested surgery that he was too late. Ferguson corroborated the evidence of Jinks that the spilling of the fruit juice was accidental.

Ferguson was 64 years of age and had a police record that went back to 1929 and consisted of three full pages of offences. It is interesting to note that despite his rather lengthy jail record he had never been in segregation at the Toronto Jail or any other institution.

EVIDENCE OF JAMES GORDON HUNTINGDON

This inmate was 33 years of age, and at the time of giving evidence was serving a three-year sentence at Kingston Penitentiary for assault causing

bodily harm. He admitted to a record that began in 1958. He stated that he entered the Toronto Jail on this occasion on April 10 or 11 and remained there "about six months".

He said he did not hear the surgery call. His evidence was not very helpful as to what occurred and he conveyed the impression that he did not wish to become involved.

He did, however, deny Dassy's statement that he had called out, "Oh my God, here comes Dassy." He said that he never said anything like that, nor did he hear anyone else say it.

Huntingdon said that he was still in his cell when the incident occurred and indicated that he knew very little more than that he was looking after Jinks's personal belongings while he was "in the damper for a while". He added, "When they cut him loose they put him in another corridor."

EVIDENCE OF BARTON LEROY LESARGE

LeSarge was 29 at the time of the hearing and had a record that went back to 1963. He said that he, like Jinks, did not have an opportunity to make his surgery request. He said that after the incident, at about 10 o'clock, Nuttall came into the area on an inspection, "and I stepped forward and spoke to him and told him I wanted to see the doctor myself along with David [Jinks]. And I explained to Mr. Nuttall that I thought it was an accident. And I would like to see the doctor myself. He took my name and put it in."

Prior to Nuttall's ten o'clock visit, LeSarge stated, he had seen Nuttall shortly after the incident had occurred. "Mr. Nuttall came into the corridor, and I stepped forward to speak to Mr. Nuttall to try to explain it was just an accident. . . ."

MR. MCRAE. How did Mr. Nuttall get called in; do you know?

A. I think it is his duty to come in and make sure breakfast was served all around. . . . So I don't think he was called in. I think he just came in. Like I said I stepped forward to speak to Mr. Nuttall, I'm not sure exactly what I said to him. We didn't have much conversation. But he was telling me to come out.

Q. Mr. Nuttall was telling you to come out?

A. Yes, to explain things to him. Not in front of everybody. He told me to come out in the corridor. I was headed towards, like the sallyport, and the door opened on the landing.

Q. Now that would be the door from the landing outside the elevator?

A. That's correct. . . . And three or four guards come through the door from the landing and Mr. Nuttall said something to them and they stopped and went back out onto the landing. By this time David [Jinks] had come out of his cell and was headed forward. And the guard that morning said something about, pointed at David, he singled David out and told David to come out. And there

was no more between me and Mr. Nuttall or anybody else. David left the range and went out in the corridor. . . . And the guard walked up to Jinks, to the door and out into the landing where the elevator is. And Mr. Nuttall continued on his way to make his inspection of 3A cells.

Q. So now we have all of the other correctional officers out back in the elevator landing, we have Jinks taken out onto the elevator landing by the correctional officer?

A. That's right.

Q. This is the correctional officer who had the juice spilled on him?

A. Yes.

Q. And Mr. Nuttall, you say, was where?

A. He went towards the sallyport.

Q. Toward the sallyport?

A. Yes. Then there was a small commotion on the landing.

Q. On the elevator landing?

A. Yes.

Q. Was the door . . . open or closed?

A. It was closed and locked.

Q. Closed and locked? How do you know that?

A. When Mr. Nuttall came back around he couldn't push the door open. He banged on it and it was finally opened.

Q. What period of time elapsed between when Jinks and the correctional officer went out to the elevator landing and the door was closed before Mr. Nuttall had attempted to get out?

A. I have no idea.

Q. Was it a half an hour or two minutes or —

A. Maybe five minutes, not much more than five minutes.

Q. All right. And you saw Mr. Nuttall banging on the door to get out?

A. He was banging for them to open the door.

Q. Would you describe the commotion? When did it happen? Did it happen before Mr. Nuttall got the door open and got out on the landing or after?

A. Before he got the door open.

Q. What was the commotion?

THE COMMISSIONER. Pardon me just a moment. This door, is that a solid door?

A. It is solid. . . .

MR. MCRAE. Would you describe the sound you heard?

A. Just noise, tables moving, feet moving. That's about it.

In commending Nuttall, the following items might be considered: he attempted to isolate the incident; he listened to LeSarge's voluntary explanation of what occurred and he did so away from the other inmates so as not to aggravate the situation; and he took a surgery request even at ten o'clock in the morning. Nuttall also continued on his rounds in order to ensure that the other inmates were quietened down. LeSarge, like other inmates and correctional officers, appeared to have confidence in Nuttall.

LeSarge stated that he had attended the Superintendent's parade on the day of the incident and two or three days afterwards, but he did not say

anything about the Jinks matter because "I don't know, it didn't seem important enough."

EVIDENCE OF ROBERT NUTTALL

Nuttall was a C.O. 4 at the time of the Jinks occurrence and was acting as shift supervisor. Normally this is the responsibility of a C.O. 5, so he was acting one grade above his rank. His responsibilities were jail-wide. He stated that he was in the Chief's office when he received a phone call from the control room officer about 7:00 a.m. He was told there was an unusual incident in Corridor 3A.

He proceeded to 3A with some six to eight officers that he picked up along the way. When they arrived at 3B landing he told the officers to wait on the landing.

MR. MCRAE. How did you get into 3A? There is a steel door between the landing and the guardwalk around the corridor.

A. The correctional officer on duty, security on 3B, let me in there, sir. He is the only man who has a key to the door. . . . I went in there to assess the situation, to see what was happening. . . . I asked Mr. Clarke what was going on. . . . He told me that an inmate had thrown juice on him, sir. . . .

Q. What did you do then?

A. I said, "That man, come out here." Then I asked Mr. Clarke, "Who was the inmate?" And he said, "Jinks". . . .

Q. And did Mr. Jinks come out?

A. Yes, sir.

Q. And what was his attitude when he came out?

A. He was not antagonistic. He wasn't anything. He just came out.

Q. You never said anything to any of the inmates except to direct these words you have described to us to this person?

A. Not to this point, no, sir. . . .

Q. Now we have Mr. Jinks in the sallyport. Did he come out into the guardwalk?

A. Yes, sir.

Q. And what happened then?

A. I instructed Mr. Clarke to take him out onto the B landing.

Q. That would be outside the elevator . . . in the vicinity of the elevator?

A. No, sir. . . . If I had him taken out of the corridor I would not have him held outside on the landing. There are rooms there . . . for the benefit of lawyers and professional people, authorized visitors coming in. Therefore if I have an unknown situation in a corridor I would prefer the man to be taken and held in the exercise area or waiting area or the segregation area around the back, out of the way of any civilian people that might be in the bay area.

Nuttall stated that Jinks was co-operative when he left the range and it was not necessary for Clarke to lay a hand on him.

A. The inmates on the south side of the corridor were becoming noisy. They were restless. . . .

Q. So you made two circuits of 3A?

A. That's correct, sir. Two complete circuits.

Q. And then you got back to the door on B landing?

A. Yes, sir.

Q. What was the situation with respect to the door?

A. The door was secured, sir. . . .

Q. How did you go out into the landing?

A. I knocked on the door, sir. And the officer on B landing came . . .

Q. Was there anything unusual about locking you in the corridor?

A. No, sir, that door is to be secured at all times. It is a security door, sir.

Q. There has been some suggestion you were deliberately locked in . . . so a beating could be laid on the inmate. I think that came from Mr. Dassy. Mr. Dassy told us in his evidence that he took the keys from Mr. Dunning, who was the officer on duty on the landing, and locked the door and locked you in there. And the suggestion from Mr. Dassy certainly was that that was to keep you away while violence was used on Mr. Jinks. Is there anything in what you observed or what you know that would corroborate that, or would refute that?

A. I don't know where Mr. Dassy could come up with an idea of a conspiracy against me like that, sir.

Q. It certainly didn't occur to you at the time?

A. That's ridiculous, sir.

Q. All right. The inmates seem to feel you were locked in there with them, too, but that wasn't the case as far as you are concerned?

A. No, sir. It is a security door which is secured, plain and simple, sir.

Q. It would be a breach of security to leave it unlocked?

A. Yes, sir.

Nuttall then went to the segregation area where Jinks and Clarke were with another unidentified correctional officer (not Dassy).

Q. What happened?

A. I informed Jinks that he was being placed in segregation on charge. I ordered him to remove his prison clothing and put on segregation clothing. . . . He removed the prison blues and put on the segregation clothing, and then he turned to the east and proceeded to walk into No. 5 cell.

Q. Go ahead.

A. I told him to stop, he was not going into that cell. . . . No. 5 cell, sir, has no bunk in it. It was not necessary for him to be in a cell with no bunk. He was co-operative, he was not violent, he was not attempting to do any harm to himself, so there was no reason for him to go in there. And I directed him into a cell which had a bunk. He proceeded into there and as he was going in the door he said, "I want to talk to you later, Mr. Nuttall." And I said, "Okay, fine,

I am going to be around here several times today." He proceeded in and he sat down and I closed and secured the door to the cell.

Nuttall said that he saw Jinks later in the morning in segregation and told him he was on charge pending the Superintendent's disposition.

MR. MCRAE. What did he say to you?

A. The exact words I don't remember, sir, something to the effect he hadn't thrown the juice on the officer, he had just knocked the juice over on the officer. I told him, well, that's fine, that's the Superintendent's decision to make as to whether it was thrown or dropped, sir.

Q. There was no complaint by him to you about any unnecessary force?

A. He made no complaint to me, made no allegation at any time that any force had been used on him, sir.

EVIDENCE OF REGINALD DOUGLAS DUNNING

C.O. 2 Dunning had worked six years at the Toronto Jail. On August 2, he was working in 3B landing, which included 3B segregation. His duties included controlling "all accesses, except for the elevator coming in. I can call the elevator, but the elevator can open any time coming up."

As for the incident, Dunning said "the first indication that there was any problem was after I opened the door and spoke with Mr. Clarke. . . . He banged on the door and I checked through the port hole, to see if it was Mr. Clarke. I opened the door as soon as I realized it was him. Then he told me he was having a difficulty with somebody."

MR. MCRAE. What did he tell you when you opened the door?

A. He was pretty funny looking when I opened the door, he was soaked. And I got the impression that he had had a little difficulty at that point. Actually I laughed at him because he was soaked, I asked him what had happened. He was not laughing but he was pretty quiet and he said that he had had a little difficulty with an inmate and would I get him some help.

Dunning then went to the telephone at the guard station and asked the control officer to connect him with the Chief's office. He relayed the information that the matter was not very serious but that Clarke required assistance to get someone out of the corridor. Clarke had told Dunning that "he called the man out and the man used an obscenity and proceeded into the cell. And that's the point at which he came over to me for some assistance."

Dunning could not recall whether he gave the information to the control office or directly to Nuttall, but a few minutes later Nuttall arrived with

C.O. 2 Frank Morris. Dunning let Nuttall into Corridor 3A and shortly thereafter four to six correctional officers arrived, including Dassy. Dunning described Jinks as "a rather special kind of inmate if you will excuse the expression special. In our classification of inmate he would fall under, what we would call as taught at Guelph, a manipulator. If there is any action in the corridor there is a darned good chance he is behind it. We cannot prove it because these fellows are quite clever."

As for Dassy's statement that he took the keys from Dunning and locked the door to 3A, Dunning said, "I cannot say one way or the other on that point. I was in charge of the landing and I doubt very much if he had my keys." Dunning said that he saw a scuffle on the elevator landing between Clarke and Jinks, but that he "did not see too much". He confirmed that Jinks was on the floor on one occasion, but he did not know how Jinks got there.

Q. While he was on the floor did he get kicked?

A. There was an awful lot of activity. As I say, it was rapid.

Q. You are under oath and you have to tell us the truth.

A. He may have been kicked.

Q. How many times?

A. I couldn't tell you that. I didn't see that at all, as far as counting anything.

Q. How many people kicked him?

A. As far as I know there was only officer Clarke involved with the inmate.

Q. What were the other correctional officers doing?

A. They were standing back.

Dunning indicated that he didn't see "the whole thing" but that what he did see did not include Dassy stepping between Clarke and Jinks. He said that one correctional officer made a move (he did not know who that was) but Clarke indicated he had everything under control and he did not require any help. Dunning said the whole incident lasted about 10 seconds. Dunning stated that he heard the banging of the door at 3A and he let Nuttall out and then went with Nuttall to segregation.

With reference to the number of correctional officers who attended on the landing, Dunning indicated that his message that only two were required may not have reached Nuttall.

In answer to a question by Mr. Posluns as to conversation on the landing, Dunning replied, "I think Jinks said something about he had been in the hospital." This would seem to corroborate that Jinks was making the statement to avoid further assault.

EVIDENCE OF FRANK MORRIS

This C.O. 2 was 43 at the time of giving evidence. He was 6' tall and weighed 179 pounds. He was born in Jamaica and had been employed by

the Ministry for two years.

Morris was the officer who took over Corridor 3A from Clarke, but he did not recall seeing either Jinks or Clarke on 3B landing.

EVIDENCE OF THOMAS RICHARD LAMBERT

C.O. 2 Lambert was born in Ireland in 1922. He was 5'11½" in height and weighed 195 pounds. He had been employed as a correctional officer since July 1956, all of that time at the Toronto Jail.

He said that he had 4½ months of training. The training consisted of working with more experienced officers and "learning as you went along".

He had no personal knowledge of the incident, as it was over before he came on duty. He had signed as one of the witnesses on the Misconduct Report. The reason may have been that he was employed on 3B landing, having worked permanently there at the time of the incident for about a year and a half, and Nuttall had questioned him about Jinks's general deportment after he (Nuttall) had spoken to Jinks in the segregation cell. "I said, I have known Jinks since he came in here, and I have always found him a quiet type of man, co-operative. I never had any trouble with him anyway. . . . He was always a quiet — a con man type, I would say."

MR. MCRAE. Is that where maybe Mr. Nuttall got that?

A. That's where he got that, from me.

Q. This man is usually a quiet inmate, a con man?

A. Yes, that's what I said. I am not saying at the same time he would not be above throwing a glass of orange juice at an officer. I am not saying he wouldn't do that, but I have had no trouble with him.

Q. Mr. Dunning referred to him as a manipulator?

A. I guess a manipulator is a common expression in the jail.

EVIDENCE OF VASSOS GEORGE ZODIATES

Zodiatas was a C.O. 5. One of his duties was to visit inmates in segregation. He worked the same shifts as other correctional officers and was on the 3:00 to 11:00 shift on August 2. He saw Jinks in segregation at 3:19 p.m. and he said that Jinks had a headache or a toothache and asked for some aspirin. He telephoned downstairs requesting that they send up some aspirin. He said that this was the only complaint. As for his assessment of Jinks, "I knew him as a smooth con, sir, we never had any problems with him before.

I was really surprised, to be honest with you, I was very surprised to see Jinks in segregation.

MR. MCRAE. Did you say he was a smooth con, is that what you said? . . . What does that mean, a smooth convict?

A. A smooth convict, you know. You know, the convict, you know one of those smooth operators, yes.

Q. Does it also mean someone who has had a fairly lengthy history of incarceration, is that what you mean by con?

A. Yes, sir.

Q. Someone who spends a lot of time in an institution?

A. Yes, sir.

Q. And he is usually quiet?

A. Yes, sir.

EVIDENCE OF CHARLES EVERS

C.O. 2 Evers was born in 1923 in England. He had been employed since 1959 as a correctional officer. He took the six-week training course at Guelph in 1961.

He was assigned to Corridor 8. He stated that there were no surgery calls for 7 and 8. These are court cells and it is not normal routine to call for surgery. He said normally two correctional officers were assigned to these corridors on a weekday morning. "If there is a spare officer, he could be detailed there too, because it is quite a busy place."

He was told by a "white shirt" whom he could not name to go to 3B landing, "that there was apparently some trouble in 3A". He believed that he went on his own. "Just as I got off the elevator I believe the inmate Jinks was coming around to the corridor."

As to what occurred, he said, "Well it seemed to happen pretty quick, sir. There was Mr. Clarke right behind Jinks . . . and all of a sudden there was a bit of a struggle."

MR. MCRAE. Now who struggled?

A. Well it is pretty hard to say. This happened very quick and this didn't last too long; and Jinks started to swing around, and I think Mr. Clarke started to defend himself and throw a couple of punches, and that seemed to be about the end of it.

Evers repeated on two occasions that Jinks "seemed to swing around". He stated that there was a flurry of blows and that "it could have been both who threw the blows. Well Mr. Jinks threw a couple of blows and Clarke retaliated, he threw one or two back."

Although Evers was there all the time he did not see Jinks knocked

down, as had been related by others. He also said that he did not see any kicks.

Q. Did [Jinks] say: "Don't hit me, I have had an operation," or words to that effect?

A. I didn't hear him say that, sir.

Q. What did you hear him say?

A. Well, there was a few words directed at Mr. Clarke.

Q. What kind of words? He was swearing at Mr. Clarke?

A. Yes.

Evers also did not recall Nuttall banging at the door. On the whole, his evidence was not very helpful.

EVIDENCE OF CLIFFORD CLARKE

This correctional officer is no longer employed at the Toronto Jail, having left in September 1974.

Clarke was born in Northern Ireland in 1942. He was 5'10" and weighed 180 pounds. He had the equivalent of Grade XI education. His previous employment included 14 years as a plumber's helper with the City of Belfast. He commenced working at the Toronto Jail in November 1973. He was a C.O. 1 and resigned on his own initiative after 10 months. He had experience in youth work in Ireland and spent 10 years in the Territorial Army Reserves, having received basic military training. He completed the correspondence course. He estimated that he worked about two nights a week overtime, bringing his work week to 56 hours.

Clarke stated that he took over the corridor at 6:50 a.m. The corridor log indicated, "Relieved Mr. Stafford, 34 inmates in custody; all in order."

He signed the book and the change-over slip and then placed the juice on the bars. The juice had been brought up by elevator and left on the landing.

Clarke said that after the cell doors were all open and he was in the guard station he called for surgery in a loud voice.

Then he looked to see if there were any requests and he stated that "nobody came out". He said he adopted a similar procedure with reference to 3A south that he had taken in connection with 3A north. He said that he received requests from two or three inmates at 3A south. Two surgery requests were filed as exhibits.

Clarke said that he went back to the north side and had another look "to see if there was anybody, but the guys appeared to be in their cells".

MR. MCRAE. What happened then? Did you call out surgery requests again or just look to see if anybody was out.

A. I just looked, sir.

- Q. You just looked, I am sorry to interrupt you. So then, what did you do?
- A. I rapped on the B landing door, to get the man on the B landing.
- Q. That would be Mr. Dunning?
- A. Yes, Mr. Dunning, to tell him about the requests. He sends them down on the elevator, or somebody comes up and takes them down to surgery.
- Q. Did you do that?
- A. Yes, sir, I did.
- Q. What did you do then?
- A. I just went back on the corridor at that time.
- Q. Go ahead, what happened then?
- A. At that time a couple of inmates had come out of their cells. This guy Jinks. he came up, he asked me about surgery requests. I said: "I called and got no response on this side."

Clarke stated that he was talking to Jinks "just proper" and that the next thing he knew was Jinks using profanity towards him and he "dropped the glasses of juice and just threw them at me . . . about two or three". Clarke could not remember having the breakfast cart at the time and stated that he was standing facing Jinks when Jinks deliberately picked up two or three glasses of the juice and threw them on him.

He said that the glasses were thrown as well as the juice, and that Jinks "threw them with both hands at the same time". He indicated that there was a lifting of two glasses and a throwing of them, and "after he threw them he hit another glass towards me". Clarke said that he was "soaked" all over his face and down his uniform to the top of his pants.

He stated that he then asked Jinks "to come out, and he went into his cell".

Clarke said he then went to B landing, knocked on the door and told Dunning that he "had better get somebody up here because the guy refuses to come out".

He said three or four guards then arrived. He thought Evers was one of them. He did not see Dassy.

When Nuttall came, he went into Corridor 3A. "Mr. Nuttall, he asked me what happened and I said that a guy threw juice on me."

He said that Jinks was in the day area at that point and Nuttall ordered him out. Clarke said that he pressed the switches to open the grille to the day area and brought Jinks out onto B landing. Nuttall then closed the doors for security reasons. There were four to six officers on the elevator landing at the time, "The next thing, Jinks took a swing at me and a poke at me and I retaliated, that is all." He said Jinks was "angry and still a bit hostile".

- Q. What happened to the swing he took at you? Did it land?
- A. Maybe on the chest or the side . . .
- Q. What happened then?
- A. I retaliated.
- Q. You retaliated?
- A. I just took one at him.

Q. You punched him?

A. Yes.

Q. Where did you hit him?

A. Somewhere in the stomach – the stomach, the chest.

Q. And what happened then?

A. He just seemed to go up against the wall.

Q. He got knocked up against the wall?

A. Yes.

Q. By the blow?

A. Yes.

Q. Was it just the one blow at that time?

A. Yes, one or two, just quick punches.

Q. Did he go down on the floor?

A. I can't recall him going on the floor.

Q. Did you use your knee on him at all?

A. No, sir.

Q. Did you kick him at all?

A. No, sir.

Q. Did any other correctional officers kick him?

A. Not that I can recall, sir.

Clarke stated that Dassy never intervened, nor did he remember him being there.

Q. Was [Jinks] knocked back against the wall when you hit him the second time?

A. I hit him twice, sir, the two punches, you know, just a couple of quick, you know, blows. I was just defending myself.

Q. And did he go part way to the floor as a result of those?

A. Just up against the wall. He just fell against the wall. . . .

Q. But he never went off his feet?

A. No, sir.

Q. What happened then?

A. I got him by the arm and just got him up and led him to the segregation cells.

Clarke was directed to the evidence he had given to Commission investigators, as follows: "At that point Jinks took a swing at my face and I defended myself by covering my face with my arms. We then told him to take his clothes off and put baby dolls on, and got him into the segregation cells. There was a bit of pushing, scuffle before Jinks went into the cell and we got the door shut."

Clarke said that he did not recall this and his evidence was not too satisfactory as to whether a scuffle took place. When it was drawn to his attention that no one else had indicated any scuffling outside the segregation cell he stated, "It wasn't a scuffle, sir, just I got him by the arm to go in." He further said, "I must have meant, sir, the B landing. I must have meant out on the B landing."

Q. Well, isn't what really happened out on the B landing – and remember you are sworn and you have to tell the truth – that you were angry with Jinks for his contemptuous behaviour in pouring juice over you and you took a couple of swings at him? Isn't that what really happened?

A. He took a swing at me. I wouldn't punch anybody unless I was defending myself.

Q. You defended yourself?

A. Yes, sir.

Q. And there were five correctional officers there and a man [Jinks] in his pyjamas?

A. Yes, sir.

In view of the other evidence I find it very difficult to accept Clarke's statement that the two punches that he admits giving to Jinks were by way of self defence. If Jinks did, in fact, swing first at Clarke on the landing, this would seem to be contrary to his reputed habits, particularly in the presence of at least four other correctional officers. If it was a matter of still being angry and he did, in fact, take the alleged swing at Clarke, then there were sufficient correctional officers to control Jinks without Clarke administering the punches to Jinks. Was Clarke also acting in anger at the time? And were kicks administered at Jinks while he was on the floor, as related by others?

Of importance is the fact that Clarke, in his Misconduct Report, did not mention being struck by Jinks at the elevator landing or even that Jinks had attempted to swing at him.

Q. You don't say anything about him assaulting you in the elevator landing.

A. They were not hard punches, you know. There were no marks on me. I wasn't bleeding. You have to put up with things. You get guys that just fly off the handle, and stuff like that. You have to put up with things like that. I just didn't think it was worth mentioning.

Q. Well, you thought it was worth mentioning that he used abusive language.

A. Yes, sir.

Q. And you thought it was worth mentioning that he hurled the glasses of juice at you?

A. Yes, sir.

Q. But the fact that he assaulted you and you had to defend yourself, you didn't think it was worth mentioning?

A. It isn't just worth mentioning.

The answers given by Mr. Clarke on this point, and his reasoning, are difficult to accept and, indeed, I find them not credible. Clarke admitted that he was still "heated up a little bit" when he was out on the landing. He was questioned about the conversation that Jinks alleged with reference to his nerves and he said that he could not remember it at the time of giving evidence and later that there was "no conversation at all".

There appeared to be inconsistency with reference to the statement given to the Commission investigators that Jinks "took a swing at my face and I defended myself by covering my face with my arms" and his evidence at

the inquiry that Jinks hit him "about the chest or the side" and that he defended himself by a couple of punches.

In answer to questioning by Mr. Salem, he said he did not mention striking Jinks to the Commission investigators.

MR. SALEM. And that was purposeful, wasn't it? You didn't mention that because you didn't want them to know?

A. It could have been.

Q. Was it?

A. I defended myself.

Q. I appreciate what your evidence is today; but I put it to you, the reason that you didn't say anything to the investigators, in respect to striking Jinks, you didn't want them to know that you struck Jinks?

A. Yes, I suppose you could say that.

Q. Well — you were covering that up, is that correct?

A. Yes, I could have —

Q. Just to clarify that point, Mr. Clarke. You said to the Commission investigators that he swung at your head, and now you say that he connected with your chest, or your side; but that really was just part and parcel, when you were talking to the investigators, of just covering up the facts that you struck Jinks a couple of times, is that correct?

A. It could be.

JINKS SUMMARY

Although the Jinks incident contained a touch of the serio-comic, it was not humorous to either of the two participants. To Jinks, there was frustration in his valid request for medical or dental attention being refused. This caused him to react angrily in a manner that was apparently out of character. As a result, whether deliberately or accidentally, he caused a significant amount of fruit juice to be spilled on Clarke. To be such a recipient was beyond what Clarke considered in the line of duty. The amount of abuse and harassment to which correctional officers are at times subjected would rarely be appreciated by the general public. There are few callings that carry such occupational concomitants added to those of a higher-than-average physical risk and at times the twin extremes of overwork and boredom. It is no wonder that correctional officers are at times short-fused or that their employment turnover rate is high. In any event, the evidence would indicate that in this instance there was an escalation of the problem to the point where, in my opinion, Clarke used unnecessary force on Jinks while on the 3B landing and *en route* to the segregation area.

I have already, in connection with the Jinks allegation, commended Nuttall on his actions. They could well be referred to for training purposes as a guide for senior officers.

The Seymour Allegation

"I never touched the man. I used psychology on him." (Gary Dassy)

"I took out the bone of the chicken leg . . . and stuffed his chicken leg with salt. . . . He then was given, instead of sugar in the tea, salt. I would not give him a drink of water." (Gary Dassy)

"I told him it would be so easy when he went to sleep to go in there, cut his wrist . . . and say he had committed suicide." (Gary Dassy)

EVIDENCE OF GARY DASSY

This incident came to light during the giving of evidence by Dassy on the Jinks incident. Dassy had stated that he had attended at 3B landing, having been advised to go there by C.O. 3 Samuel Barrett.

MR. MCRAE. You indicated as you got off the elevator there one of the inmates by the name of Huntingdon saw you?

A. I believe so, yes.

Q. And he said, and I think your quotation was, "Oh my god, here comes Dassy"?

A. Yes, sir.

Q. Had you known Mr. Huntingdon before?

A. Just being an inmate of the jail, sir, yes.

Q. All right. Were you the only one to get off the elevator?

A. At that time, yes, sir.

Q. Can you help me with why he would say, "Oh my god, here comes Dassy"?

A. Because I believe he has seen me in action at the jail with the rest of the guards that I have mentioned.

Q. He has seen you in action?

A. Well, he has seen me in the jail, sir, and he knows my size, and he knows there are guards only like myself [who] come when there is an altercation in the jail.

Mr. Carter questioned Dassy about Huntingdon's comments.

MR. CARTER. And he says that, I gather from what you said, because of your action in the jail, because of your reputation? Would that be fair?

A. I don't know if I had a reputation, sir. I do know that myself, inmates when they seen fellows like myself and the other guards I have mentioned, they know that something could happen.

Dassy stated that he believed Huntingdon might have heard about him from an inmate by the name of Greg Seymour.

Q. And you believe that Seymour related to Huntingdon an incident concerning you?

A. Yes, sir. . . .

THE COMMISSIONER. What is the incident in reference to Seymour?

A. He would not give a statement to the investigating officer, sir. I never touched the man. I used psychology on him, what I consider psychology. It did seem to work because the man never attacked or kicked another guard from that day on until he was shipped out. . . .

Q. What is the psychology that you used?

A. Sir, Seymour has a habit of kicking guards in the groin. He gets to me, the charge he was sentenced on, he gets sexual pleasure from this. So I am not going to waste my time hitting somebody if it's not going to have any effect, give them pleasure instead of pain. So I was on 3B landing and he was in there for kicking Jeff Eades in the groin and another guard in the groin. So I told him that he wasn't going to get the opportunity to do that to me, so I then ordered no spoon for the man, a meal with no spoon.

In the above, Dassy admitted to the hitting of inmates, saying that it would be a waste of time to hit an inmate if it wasn't going to have any effect, if it was going to give pleasure instead of pain. If there was ever a statement that went against the declared Ministry policy this was it.

Dassy went on: "It was Sunday night and there was chicken that night for dinner. I took out the bone of the chicken leg because that could be used also as a weapon, and stuffed his chicken leg with salt. He had a cup of tea. He then was given, instead of sugar in the tea, salt. I would not give him a drink of water. I told him that there is just you and I now Seymour and one

of us isn't going to live if you are going to continue kicking officers and what you have been doing. I told him it would be so easy when he went to sleep, to go in there, cut his wrist, come out, make [an entry] in the book, and say he had committed suicide. From that day on Seymour caused no more problems in that jail."

MR. CARTER. Where was Mr. Seymour, was he in segregation?

A. Yes, sir.

Throughout the inquiry there was no evidence of any other correctional officer who had acted in a similar manner to that admitted by Dassy with some degree of pride. Dassy was asked whether Seymour had done anything to him, to which he answered, "I never gave him the chance, sir."

Mr. Carter, in his cross-examination of Dassy, probably reflected the opinion of all who heard his evidence on the Seymour matter.

Q. He would have eaten something extremely salty, would have a tremendous thirst and get no water?

A. Yes, sir.

Q. That is really a form of torture?

A. I don't believe so, sir.

Q. And then the only thing that he did have to drink was tea?

A. Yes, sir.

Q. And you put salt in the tea to make that very salty?

A. Yes, sir.

Q. And you don't consider this torture. You refer to that as psychology?

A. I refer to it as corrective measures.

Dassy was then asked where he learned these "corrective measures".

Q. Where did you learn corrective measures or was it something you thought of?

A. Oh, I have had occasion to read, sir.

Q. Where did you read about this?

A. I could not actually say, sir, but it worked.

Q. My question was where did you read about it?

A. I could possibly have read it in some psychology magazine or some form of medical journal, that these type of treatments are used. . . . I don't subscribe to, I could have picked it up in my family doctor's office or I could have read it in the library, any number of places, sir.

Q. But it's a recognized psychological journal that describes this kind of conduct.

A. I imagine it would, sir.

Q. Rather than have your imagination, we would rather have your recollection.

A. Well I can't actually say, all I know is my doing what I did to him that night saved perhaps five or 10 guards from being assaulted.

Q. Did you ever tell anybody what you had done?

A. Of course I had a witness, Mr. Sid Furman. He was a correctional officer at the Toronto Jail.

Q. Did you ever tell anybody else?

A. Jeff Eades knew about it.

Q. I take it you would go around to most of the officers and say that this great psychological method of stopping this man from kicking works?

A. No, I didn't, sir. I don't brag about what I do.

Q. You don't?

A. No, I don't, sir.

Q. Do you recall whether you told anybody about it?

A. I believe the last officer he kicked was Jeff Eades. I told him about it, yes, sir.

Q. So then as a result of this incident you believe Seymour told Huntingdon?

A. There was another aftermath. I believe Lieutenant Nicholson told me I had done the right thing the following day when I was working 2 and 3 annex, I think, sir.

Q. Lieutenant Nicholson told you you had done the right thing?

A. Instead of trying to beat the man I more or less – I don't know the exact words he used, sir, but it was better than beating the man.

Q. Did you tell Lieutenant Nicholson what you had done?

A. No, Seymour told him what I had done.

Q. Were you there?

A. No, sir. Seymour by this time was being charged and he was relating this to Nicholson.

Q. What information did you have as to what Mr. Nicholson was told?

A. Mr. Nicholson came over to me the following day on a Monday afternoon at lunch time when I was giving out the meals on 3 annex. And he said, "You did the right thing by what you did to Seymour last night." He said Seymour had told him what I had done and that he never wanted to have me guard him again.

Q. All right. Now that's the end of the episode?

A. I never heard another thing about it plus the fact that Seymour was a very docile inmate afterwards.

Q. I gather a very thirsty one, too?

A. Yes, sir.

Q. Now as a result, then, of what Seymour tells Huntingdon, on August 2nd when you arrived at 3B landing, you think Huntingdon because of his information of that event said, "Oh my god, here comes Dassy"?

A. Yes, sir.

Nicholson was interviewed and a statement obtained from him (Exhibit 653A). This statement reads as follows:

I remember Greg Seymour very well, he had a poor reputation in the institution. He was constantly in segregation. I know for a fact that Seymour never told me about this, he wouldn't give a C.O. the time of day. Furthermore, I don't know how Dassy would get salt. It is not given out to any of the corridors and is definitely not given to inmates in the B landings. I never ever spoke to Dassy about such an incident, and would certainly not compliment him on such an act had it happened.

When an attempt was made to interview Eades it was ascertained that he was no longer employed by the Ministry of Correctional Services and his whereabouts were unknown.

Although Dassy undoubtedly derived some pleasure from what he did to Seymour, out of fairness to him it should be said that, at least on his evidence, he felt that his actions were in the best interests of the other correctional officers.

Mr. Bynoe showed Dassy an excerpt from the 2B segregation log. (It had been Dassy's previous evidence that the affair took place in 3B.) According to an entry made by Dassy, Seymour had threatened to kill Dassy.

MR. BYNOE. I'm showing to you . . . a page from 2B segregation book under the date of June the 22nd, 1974. Will you examine this . . . and advise me if there is any notation there with respect to Mr. Seymour?

A. Yes, sir. 6:10. Seymour threatened to kill me because he had no spoon for dinner. I/c Mr. Furman. I signed it G. Dassy.

Q. Had Mr. Seymour threatened to kill you?

A. He probably did, sir. He used to throw a lot of threats around the jail at guards and inmates, sir.

Q. I see. I don't recall you telling us that, Mr. Dassy. Did you or do you recall?

A. I don't recall, sir. . . .

Was the reason that Dassy forgot about the threat the fact that he never considered it to have been made with any degree of seriousness? This conclusion is reached despite the entry Dassy had made in the log.

SEYMOUR SUMMARY

Although no physical force was used against Seymour, the mental harassment admitted by Dassy was undoubtedly as censurable as some of the examples of wrongful use of force that came to light during the Commission hearings, if not more so.

The Conway, Southam, Charette, and Geddes Allegations

"There are some inmates who cannot accept any authority whatsoever and it does not matter how decent you are to them they will still be the same. They will still treat them [the correctional officers] with disrespect."
(Bruce Conway)

"After a while you get used to it. . . . You feel useless, or worthless, like you were really locked up. . . . You think and you wander around and read the Bible. . . . Well, it doesn't develop an attitude – after a while you don't really care. They can't keep you forever, they have to let you go some time." (Bruce Conway)

"You develop a self-sympathy; you begin to feel sorry for yourself, but what can you do? Just shake it off, you know. . . . Accept it." (Bruce Conway)

"Well, the man says he was kicked and the man says he was punched so somebody had to do it, did they not? He could not do it by himself."
(C.O. commenting on Conway's allegation)

"He was the biggest sadist of them all . . . It seemed like he was the one mostly in the football game there." (Daniel Charette, referring to Gary Dassy)

". . . instead of six weeks' training that the jails tells you you are supposed to have I had four days' training and therefore I am not aware of all the standing orders. It's the fault of the jail for not giving me proper training."
(Gary Dassy)

"And he walked half way into the cell and then he just roared out with his arm and his leg and his head, when we had the door half closed. We managed to get his legs and his arms in. We couldn't get his head in, and I put my hand up – I went to their assistance and put my hand up to shove his face, to shove his head in, and how my hand got in his mouth I don't know yet. He chewed it [a finger] off – it was well over two minutes . . . He chewed on it for over two minutes before he got it off." (C.O. 5 Donald McKay)

"There is too many mental cases goes to the jail, and there is no facilities to handle them." (C.O. 5 Donald McKay)

On April 30, 1974, Bruce Andrew Conway, Daniel Charette, Roderick William Southam, and Edward Andrew Geddes were inmates housed in Corridor 6 at the Toronto Jail. Conway and Charette were friends, aged 20 and 19, respectively. They shared a cell with Geddes, who was 17 years old. Southam was in a different cell in the same corridor. He was 21. Shortly after 7:00 p.m. a fight broke out between Conway and Southam in the day room of Corridor 6. Both of these inmates were removed and taken to segregation. There was some suggestion in the evidence that Charette wished to join his friend Conway in the segregation area and purposely kicked young Geddes in the face. Whether this was the reason or whether it was a result of tension in the corridor, particularly on the part of Charette, there is no doubt that the kick was vicious and unprovoked. Geddes' eye-glasses were broken and he sustained bleeding to his face. Charette was also removed to segregation.

Gary Dassy, in one of his initial interviews in the *Toronto Star*, alleged that both Conway and Charette were assaulted by the correctional staff. During the course of the investigation and/or the giving of evidence on these allegations, additional allegations were made by Southam, Geddes, and Charette. Southam alleged that he, too, was assaulted on April 30. Geddes contended that he was "threatened" with assault on this date and actually assaulted on another occasion. Charette, in addition, claimed an earlier assault – the previous year.

For the sake of clarity, it is proposed to discuss the above allegations as follows:

1. The April 30, 1974, incidents
2. Charette's second allegation
3. Geddes' allegation of assault

1. The April 30, 1974, Incidents

On the above date, Conway and Charette had attended an evening "rap session" in the chapel. Dassy, in his evidence, described a "rap session" as a

gathering of inmates at which they "are supposed to stand up and confess their criminal activities". This is an example of one of Dassy's statements where accuracy was secondary to attention-getting. More correctly, he also referred to it as a type of group therapy involving a general discussion with social service workers. According to the Corridor 6 log, Charette returned to the corridor at 7:15 p.m. and Conway at 7:18.

EVIDENCE OF BRUCE ANDREW CONWAY

At the time of giving evidence, Bruce Andrew Conway was serving "12 months and 344 days" for parole violation. He was serving this sentence at Millbrook, which is a maximum security provincial institution. His record, going back to 1972, consisted mainly of convictions for theft. He had been an inmate of the Hamilton, Walkerton, Burwash, and Guelph jails, as well as of the Toronto Jail.

MR. BYNOE. Both of you then returned to the corridor; is that right?

A. Yes.

Q. When you returned to corridor number 6 what mood were you in?

A. Well, I was in a pretty good mood . . .

Q. How did it happen you got in a fight?

A. It was nothing from the rap session that upset me. It was just that I was on the old side of the Don and I didn't like it there. I was on the new side before and I was upset because I wanted to get out of the cell. . . .

Q. From your statement I gather you preferred to be held in custody on the new side as opposed to the old side; is that right?

A. Yes.

Q. Why?

A. Living conditions are a lot better . . .

Q. Now, you have indicated that one of the major differences was that there was one person per cell in the new area, whereas there are four in the old corridor 6?

A. This is one, yes.

THE COMMISSIONER. When you say four, would that be two bunk beds?

A. Yes.

Q. Or were they four individual beds?

A. Yes, two bunk beds. On the new side it's newer, it's all maximum security, and everything is electric, the doors, and that, and you feel more like – you know, it's a more human atmosphere, you know.

Q. It's more human?

A. Yes. On the old side, it's falling apart, it's a shambles, it's a mad-house, it's always packed.

Q. It's overcrowded you said?

A. Overcrowded.

As for the incident, Conway said, "Well, I was upset like I say because I wanted to get out of that corridor and wanted to get transferred. And there was a guy there and I didn't like him very much. There were certain things about him that I didn't like, he was bothering me, you know, I got a little upset."

Q. Was this as a result of a conversation you had with him?

A. Yes.

Q. Yes.

A. And I got into a fight with him.

Q. Do you know his name now, is that Southam?

A. Southam, yes.

Q. Now where were you when this fight started, and how did it start?

A. This was back at the corridor, well I started it, it was my fight. I called him down and I smacked him and we got into it, it didn't last very long.

Q. How many blows were struck, have you any idea?

A. Three or four.

Q. By each?

A. I can't remember. . . .

Q. You went up and picked a fight with Southam and you struck Southam and the fight ensued?

A. Yes.

Q. What happened as you were fighting?

A. As we were fighting . . . one lieutenant and two guards, I believe, rushed into the corridor.

Q. How did you know this man was a lieutenant?

A. He wore a white shirt.

The "white shirt" picked out by Conway from the book of correctional officers was C.O. 3 James MacDonald.

Conway stated that the correctional officers said something like, "all right, stop it, or something like that. Something to that effect, which we did."

Q. You did. All right. And what happened when the lieutenant and two guards came in?

A. Well, after we stopped — after we stopped they came in, right away after they came in and came down, I stopped, and I'm not sure whether they said, all right, let's go, or whether I just walked out automatically. I knew the procedure and I knew I was going, so I think I just started to walk out and they followed me out.

Q. How did you know the procedure?

A. Well, I knew I was going somewhere, you know.

Q. Have you been in segregation in other instances?

A. Yes.

Conway stated that he was proceeding with MacDonald beside him and two other correctional officers behind, and that as soon as he was "out of sight of the other inmates" MacDonald gave him a "cuff on the side of the

head". He thought it was an open-handed slap as opposed to a fist. "It was not very hard. I gave him a sneer and he gave me a slap on the side of my head."

He indicated that one of the officers walking behind then put his arm in a come-along hold, a type of armlock, and he was moved down the stairs "kind of fast". He stated that he did not fall down the stairs. He said that when he reached the basement corridor, he was taken into a little room "just to the right of the bottom of the stairway".

Q. After you entered that room what happened?

A. It happened so fast. I would say about half a dozen guards, they just started kicking me and punching me in the back, stomach.

Q. Half a dozen guards just started kicking you and punching you?

A. Yes.

Q. Back, stomach? Where did the guards come from?

A. I don't know. I don't know.

Conway said he did not see the "white shirt" in the room but he considered that it was unlikely that he had left. He was not positive about the identification of all the correctional officers who were present. Among the correctional officers he mentioned were C.O. 2 Randolph Ralph, C.O. 2 David Cordner, C.O. 2 Herbert Hogg, and C.O. 2 George Carpenter. All four denied being present.

Conway stated: "I am not sure whether one of them knocked me down or whether I fell down or went down to protect myself. I can't remember. But when I went down they continued – I covered my face so I wouldn't get any kicks or punches in the face; this went on for approximately two minutes, then they marched me out down the hall."

As for the severity of the assault, he said, "Well, let's put it this way, sir. I have had worse beatings. It hurt but it wasn't all that bad, you know. I didn't suffer, you know, I didn't suffer any, you know, no blood, no black eyes. But, you know, it hurt."

Afterwards he was led down the basement corridor with one arm behind his back to the elevator in the new building. He said a "different lieutenant and about three guards" entered the elevator with him. He identified ("almost positive") McKay as the new "white shirt". He said that when he was in the elevator McKay punched him in the stomach once with considerable force, causing him to double over.

He said Ralph was one of the guards in the elevator and also "in the room" when he was "kicked and punched". In the segregation area, both MacDonald and McKay were present. "After I went – I took off my clothes. I walked into the cell. The first lieutenant, James MacDonald, and Randolph Ralph, and one other I can't recall, followed me into the cell and started to kick me again, on the ground . . . MacDonald and Ralph and someone else who I can't remember."

Conway alleged that in the segregation cell MacDonald kicked him "half a dozen times in the stomach and back" and that he was wearing shoes rather than boots at the time, and this was while he was lying down. He indicated

that he had lain down on the floor when he entered the segregation cell as there was no bed to lie on. He said that although he thought he covered his head he was able to see MacDonald kicking him. As for the force used, "they hurt, you know".

Asked whether there was any conversation, he said that MacDonald said, "Going to fight again? Going to fight?" He was warning me about fighting, you know."

As for Ralph's actions, "I believe he gave me a shot in the stomach just after . . . I went into the cell."

Q. What does a shot mean?

A. He punched me in the stomach.

Q. With what?

A. With his fist.

Q. With his fist? What degree of force was used there?

A. Oh, considerable force.

There is some contradiction in Conway's evidence as to the sequence of events in segregation, for he relates that as a result of Ralph striking him he "buckled over and then I think at that point I just sat down on the floor, that is all" and that this preceded MacDonald's kicking. He stated that Ralph, in addition to punching him, also kicked him two or three times in the stomach and back.

Conway was unable to identify the third correctional officer in the cell.

Conway said, "Well, after that, they closed the door and I just laid there. I had no drinking water and I was dying of thirst, my mouth was parched and I was tired; and they brought me blankets that they issue to you in segregation, but maybe an hour and a half later, and then I went to sleep. . . . Well I couldn't sleep too good. I couldn't move over. I couldn't sleep on my side, and if I tried to move over I had to do it by steps, you know, because my shoulders hurt."

Conway stated that he entered the Toronto Jail from Burwash on April 26, 1974, and remained until May 7.

Conway's Medical Summary contained the following relevant items:

April 26/74 Admitted on Transfer (Toronto Jail).

April 27/74 No complaints or injury.

O. B. Dickinson

May 1/74 Sustained injury to left flank last night in fight. Flank swollen – very tender . . .

P. A. Dubelsten

May 6/74 Seen on second medical Toronto Jail. Fit for transfer.

O. B. Dickinson

Conway said that when he woke up the next morning he ate a regular breakfast and he was seen by Mr. Farquhar who asked him about his charge. "And I can't remember what excuse I gave, maybe I said I was upset. I got into the fight. I can't recall. Maybe I was flippant . . . I lost 10 days

statutory remission.”

The Misconduct Report, Part 2 (investigation by McKay), was rather revealing about the tension among inmates and the types of problems correctional officers have in protecting one inmate from another. It indicated that the attack was unprovoked.

Part 4, the disposition by Mr. Farquhar, showed a 10-day loss of statutory remission, which is the most severe penalty that can be imposed. This penalty is not often used. Mr. Farquhar's comments indicated that Conway was considered to be a disruptive force who could threaten the discipline of the inmate population.

Part 3, the inmate's statement, was signed by Conway and this is a procedure which is not always adopted, but of which I approve. The summary indicated an admission of fighting.

Conway said that he sustained no injury in his fight with Southam. If this was correct, then the injury reported by Dr. Dubelsten must have been a result of Conway's encounter with the correctional officers. Conway at first denied that Southam had received any injuries either, but later acknowledged that he had caused a cut to Southam. He described his fight with Southam as being “just a minor thing. It was – it only lasted about a minute, just a couple of blows.”

Q. It was minor, you didn't like him, and you were upset?

A. Yes.

Q. You told him to stand up and you smashed him?

A. Yes.

Q. And you started fighting?

A. It was just a couple of blows and I know that I wasn't hurt in the fight.

Q. But he fought back, isn't that right?

A. Yes.

Q. And the fight went on for several minutes didn't it?

A. Yes.

Q. Because the guards had to first of all hear some noise or altercation, had to see what was going on, and then they had to unlock the door and the alarm bell was pushed I gather?

A. Okay.

Q. And someone had to appear, because you said a white shirt and two other ones arrived before there was any breaking up, isn't that right?

A. Huh, hum.

Q. How long would you say this fight lasted before you stopped throwing any blows?

A. Three minutes.

Q. About three minutes. One good round?

A. Yes.

One might doubt whether, during the three-minute fight, Conway did not receive any injuries. The Medical Summary was as consistent with the injuries having been sustained in the Southam fight as in the alleged assault by the correctional officers, with the added notation that the injury was

sustained "last night in fight". Did Dr. Dubelsten obtain this information from the correctional officers or from Conway himself? It would have been more conclusive had the medical report indicated the source of the information. Although it is appreciated that the medical staff is primarily interested in the injury, medical staff might keep in mind the value of such information to any subsequent investigation.

Concerning Mr. Farquhar's comments that Conway showed no remorse:

Q. Well now, what about the statement on the bottom of Part 4 . . . of the Misconduct Report where he says: "No remorse is shown"? Is that accurate?

A. He just didn't like my attitude towards him, more or less chauvinist.

Q. Were you really remorseful for what happened?

A. Not really, no.

Q. It is fairly accurate then, isn't it, no remorse was shown. You didn't care, you had done it and that was it. So that was accurate?

A. Yes.

Q. What about the statement: "Return to regular population could well break out in additional violence." Do you feel that was an accurate assessment by Mr. Farquhar of your attitude at that time?

A. I think - yes.

Conway was not sure whether he had complained to Mr. Farquhar that he had been assaulted by the correctional staff.

Concerning Conway's visit to Dr. Dubelsten on May 1:

Q. And how did that happen, that you saw Dr. Dubelsten?

A. I believe I complained about my back, or they just sent me up there because of the charge, fighting - I can't say - for examination. I can't say, I think that I requested it.

Q. You think you complained about the injury?

A. Yes.

Q. All right, and did you tell Mr. Farquhar how you sustained your injury?

A. He wasn't there.

Q. Did you tell Mr. Farquhar how you sustained this?

A. No. I didn't complain to him, no.

Q. So that doesn't refresh your memory. Did you complain to the doctor about how you sustained your injury?

A. No.

Q. Well, what injury did you have, Mr. Conway?

A. I had some scrapes on my back.

Q. I gather you couldn't see them, you would have no way of doing that?

A. I'm not sure if it was on my back - I think it was on my shoulder, around here [indicating] one scrape.

Q. How serious was it? Could you describe it to the Commissioner?

A. The scrape wasn't serious, it was nothing physical, it was just, you know, I was taking baby footsteps. I could hardly move, you know.

Q. Why was that?

A. It was from the kicks, you know. If I sat down I would have to sit down

very slowly and if I wanted to get up I would have to take my time. It took me a couple of minutes just to stand up and sit down.

Q. Now then you have no recollection of telling Mr. Farquhar, and you have indicated that you didn't tell the doctor about the beating. Do you remember what you told the doctor as to how you sustained whatever injuries you had?

A. Yes. I told him I got into a fight. That's all I said.

Q. Just got into a fight? That's what the doctor has recorded, that you got into a fight, and that's what you told him?

A. Yes.

Q. So I gather as far as the doctor was concerned he would be just looking at you as someone who had been in a fight and he would treat you on that basis, is that correct?

A. Yes.

Q. Now then, apart from this scrape that you had on the shoulder, what other injury did you have that you can remember?

A. That's all I can remember.

THE COMMISSIONER. Mr. Conway, when the doctor examined you on the 1st of May – that's Dr. Dubelsten – why didn't you tell him that you had been beaten by the guards?

A. Because I don't like to do that. I don't like to tell somebody that they did this to me or they did that to me.

Q. Why?

A. I didn't want to start any hassle. I felt that I couldn't do anything about it, you know, there was no proof and what can you do? So why should I tell him, you know?

It is thought that if he was referring to any fight other than that with Southam he would likely have indicated to Dr. Dubelsten that it was a fight with, or assault by, correctional officers. His reference to a fight in all probability meant the fight was with Southam.

As for Conway's opinion about the motivation of the correctional staff:

Q. Now did you see any of the other guards or any guard involved with applying force to your person at any time after you were placed in the segregation cell number 5 on 3B on the 30th of April?

A. No. They played their head games, you know.

Q. They play their head games? What does that mean?

A. The fat one, Ralph, would come down the next day and he would ask me my name – no not my name, he would say, what are you here for? What's your name? You know, try and make me think it was only a dream, you know.

Q. When he asked that question what response did you make?

A. I don't believe I made any response. I just looked at him and walked back into my cell.

THE COMMISSIONER. Maybe he was asking the question to see what . . . your physical state was, to see whether you were orientated.

A. That could be it.

Q. You see, you shouldn't always impute the worst motives to people. Sometimes there is another explanation.

In answer to Mr. Carter, Conway admitted sneering at MacDonald – “I just scowled at him” – after MacDonald made some remark like, “Think you’re a smart guy?” According to Conway this was followed by a cuff, in return. He said that it was “just to put a little scare into me, being like ‘Don’t mess with me.’”

MR. CARTER. Really nothing serious?

A. Right.

Q. And it was as a result of your sort of sneering attitude that it resulted? All right.

A. Yes.

Although Dassy gave his evidence earlier than Conway, it has been considered more appropriate in reviewing the allegations of April 30 to set out his version of what occurred after referring to the evidence of the inmate principals.

Dassy’s evidence was then put to Conway. It indicated that the “blow” from MacDonald was sufficient to cause Conway to wilt, to buckle his knees, and to force him down to the ground. Conway, at the inquiry, smiled, shook his head, and said “That’s too much.” He agreed with Mr. Carter that Dassy’s description was “a gross exaggeration”.

As for Conway’s identification of Carpenter, Mr. Carter brought out the fact that Carpenter had signed out at 7:00 p.m. and therefore was not on duty at the time of this occurrence.

Conway said that about eight minutes elapsed from the time he left Corridor 6 until he was in his segregation cell, and this included the three minutes in the small basement room. In answer to Mr. Carter, he said that he did not complain of pain anywhere else than in his left flank because, “You see, I didn’t think much of the incident, it just happened. All right, they punched me out and that’s it and it’s all over with. I don’t really care, you know. What can I do? So I didn’t pay much regard as to the times and who was who or how long it took to get from here to there or whether it was this room or that room.”

Conway was also questioned about the notation of C.O. 2 Seigfroy John in the segregation area, indicating that on May 1 at 6:55 he “visited each inmate locked in cells 1-5. All seen, no complaints.” To which Conway replied, “Are you trying to say that this officer went around at 6:55 and asked everybody who was in detention if they had any complaints in the Don Jail?”

Q. That’s what his note says, isn’t it?

A. That’s what his note says.

Q. You say that didn’t happen?

A. No. . . .

Q. I suggest to you that the male nurse was with Mr. John at that time?

A. Why didn’t you say so?

Q. Pardon?

A. Why didn’t you say so? When you said that, I took it as if an officer just

walked by and asked everybody if they had any complaints. I believe a nurse came by, a male nurse came by, actually accompanied by another officer and asked everybody how they were that morning. And I made a complaint.

Q. Did you make a complaint?

A. Sure. Yes, I said I would like to see the doctor.

Conway said that the mark on his shoulder had disappeared "a little while after" he arrived at Millbrook. He said that he did not think he complained to Dr. Dickinson at the time of his second examination, prior to his transfer to Millbrook.

EVIDENCE OF RODERICK WILLIAM SOUTHAM

Roderick William Southam was 21 years of age and had been in the Toronto Jail several times. He said that in January 1974 he worked in the guard-house making tea for the guards "and cleaning up after them", and at that time he "got to know just about all of them by face". He said he had no difficulty with the correctional officers and was "treated very well, I had more privileges than usual because of my position".

He was in Corridor 6 on April 30, 1974, awaiting transfer on a charge of escape custody from a jail in British Columbia. His record went back to April 1971 and involved offences in Manitoba and British Columbia as well as in Ontario. The offences included breaking and entering, possession of stolen property, attempted fraud, public mischief, possession of narcotics, common assault, and possession of a weapon dangerous to the public peace. With reference to the escape in British Columbia, Southam said, "Well, they haven't figured it out yet. I don't think it would be wise for the security of the institution for me to tell."

He said that at the Toronto Jail a saw was recovered from him and that he had it for the purpose of attempting to escape. He indicated that the saw was part of a pocket penknife. As for being able to smuggle it past the search area, "Well, I guess it was a position where I had knowledge of the guards, the way they acted and what they were looking for. And I guess when they are in a position and they see somebody completely naked and they are searching things such as your mouth and occasionally they search you, you know, your rear end and look in under your foot. They don't expect something to be in your hand, you know, passing it around." He indicated that "if somebody really wants to, something can get in". In this category he included drugs and knives.

He stated that he thought there were three officers in the search area at the time and that he came in "a truckload from the courts. There would be about maybe six to eight people going through at the same time. At the same time I was being searched I think there were maybe one or two other

inmates being searched.” He said that in addition to the body search there would be two officers in the shower area and that they were “pretty observant”. He said the saw was discovered when “an informant told the officials that I had it”.

Southam said that he was playing cards with another inmate at about 7:00 p.m. on April 30; he had performed some card tricks and there were a number of questions about these tricks.

Among those in the corridor were Conway and Charette. Southam related that while he was playing cards, Conway came up. “I was sitting at the table playing cards and he called me out.”

MR. BYNOE. What do you mean “called me out”?

A. He asked me if I would stand up a moment.

Q. Yes?

A. I wasn't sure what was going on, but I was interested to see what was going on. I was getting bored with cards. . . . Anyway I got up and as I got up he swung at me. He let me take one step first and then he swung at me.

Q. What with?

A. Just his fist.

Q. And then?

A. Well, a brief fight ensued.

Q. How many times were you struck?

A. Oh, I was struck a few times.

Q. About how many?

A. Five or six times.

Q. Did you strike any blows yourself?

A. I hit him a couple of times with my feet.

Q. Your feet?

A. Yes.

Q. Did those blows land?

A. Well, I wasn't wearing boots at the time so it wouldn't be very hard.

Q. The question was did they land?

A. Yes, I landed a couple of blows.

Q. Where?

A. I believe it was his thumb.

Q. Whose thumb?

A. Conway's thumb.

Q. What effect if any did your blows seem to have?

A. They were intended as a deterrent. However, they were not very hard.

Q. They had no effect on Mr. Conway?

A. No, not really. The fight was almost like a play fight. The blows on either side weren't hard.

Q. Did anything happen to Mr. Conway's shirt?

A. I grabbed for him and I grabbed the shirt and ripped it.

Q. What effect if any did that have on Conway?

A. Nothing really.

Q. Had you given Mr. Conway any reason to pick a fight with you?

A. Well, obviously he seemed to think so.

Q. In your mind had you?

A. No.

Q. Had there been any animosity between the two of you as far as you knew before you were struck?

A. No, not really.

Q. As far as you knew was there any reason why he should strike you?

A. No.

Q. Before . . . he struck you, did you anticipate that he was going to strike you?

A. No.

Q. So for no reason at all, as far as you were concerned, he called you out and struck you?

A. Yes.

Southam also gave the following evidence.

A. Conway was a little irritated with one of my tricks. He figured out how to do it after a period of a whole day of trying to figure it out. He was trying to figure out how to do it and he was mad at the way I had done it.

Q. Is this the same day he hit you?

A. It was that night.

Q. All right. So then that day he did have a little animosity towards you.

A. A little animosity, nothing serious. I never thought he would want to fight about it.

Southam said that he received, by way of injury, a slight cut on his chin.

Southam also stated that he had not hurt Conway in their fight. This was confirmed by Conway. If one accepts the evidence of both of these inmates, the injuries referred to in Dr. Dubelsten's evidence and report were sustained at the hands of the correctional officers.

Q. Well, when this scuffle was going on, or fight, what happened?

A. Well, some of the inmates were trying to stop – they were yelling "Stop it", you know, and the guard saw it and then a few guards came in to break it up.

Southam identified the correctional officers who came in to break up the fight as C.O. 2 Kingsley Lyn, who was in charge of the corridor, C.O. 2 Wayne Wong from surgery, and C.O. 2 (later C.O. 3) James B. Brown. He said the "guard on duty yelled to stop at one time" and then the door opened and two or three guards came in. He said that they were all "grey shirts" and that they grabbed him and Conway and the fight broke up. He said that it wasn't much of a fight, "almost like a playful struggle". From the time the correctional officers first entered the corridor until he was taken to segregation, he said, there were about half a dozen officers there.

He said he was taken to surgery and received minor treatment there. Later, he was taken downstairs and he alleged that from the basement corridor he was led into the photography room. He claimed that, here, Brown punched him between the breastbone and the stomach "just about as hard as he could hit". The result was that the wind was knocked right out of him. "I

went down to the ground and tried to get my breath back but that just caused me to crumple. I fell to the ground and I was kicked a few times." He was unable to say who kicked him. He indicated that two of the correctional officers present were Brown and Wong. He said that he was kicked in the back and both sides, that there were three or four kicks.

He said he was questioned as to what the fight was about. He was not sure but thought it was Brown who had questioned him. He said that he would tell them about the fight and he told them that he was "not very popular at the time or something and so they stopped kicking . . . I was allowed to get up and I was taken over and put into segregation." He said that he would not describe the kicking as a "beating" and that he had not related this incident to anyone prior to giving evidence before the Commission.

With reference to the identification of Wong, Mr. Carter showed by the jail records that Wong was not on duty at the time the fight broke out and when Southam was taken to segregation. Southam said the records must be wrong.

Southam continued to allege that Lyn was present in the little room in the basement but he said that Lyn never touched him. Entries in the Corridor 6 log raise some doubt as to whether Lyn could have been present. Southam, on further questioning, indicated that he was sure about J. B. Brown but reduced his certainty about Wong to "75 to 90 per cent".

He said that nothing eventful happened on the way or when he was taken into segregation. After being there "about five minutes, maybe longer" he heard some noise. "They were bringing in somebody else. I went up and looked out of the window and I saw Mr. Conway coming along. The guards seemed to be - he could hardly walk . . . they seemed to be helping him along. I saw somebody take a swing or move their arm at him but I did not see whether it connected or not. . . . I saw Conway half stumbling, half walking along. There seemed to be guards trying to help him along, urging him to come on. One of them [he did not know which] sort of half-heartedly took a swing, tried to push him."

Although Southam was fairly definite that it was Conway that he saw through the window of his cell, the segregation log indicated that Conway was admitted to the segregation area at 7:20, 15 minutes before Southam was admitted, and Charette 10 minutes after, at 7:45.

If Southam did see an inmate from his own segregation cell as he related, it must have been Charette and not Conway.

As for the alleged falsifying of records, Southam acknowledged that even if the correctional officers had an investigation in mind, there would be no advantage in reversing the names of Charette and Conway in the log. The suggestion that the records were inaccurate has no validity in this case.

It would be advisable for the segregation log to indicate in which cell an inmate is placed, as this might be of assistance at some later time in a situation such as this, or in connection with other allegations or incidents that might arise.

The officer laying the charge against Southam was C.O. 2 David Corder who stated that he saw Southam and Conway fighting in the corridor and he

shouted for them to stop fighting and they refused. As a result of this he later charged Southam with disobeying a lawful order. When they refused to stop fighting, he pressed the alarm button and gave his keys to Lyn, the other corridor correctional officer. He then went into the corridor himself and by that time MacDonald had come along with other officers and Conway and Southam were taken out.

The above indicates one of the duties that fall upon correctional officers, namely to try to stop fights by giving orders and, when this is not effective, by going into the corridor and physically breaking up the fight. This, at times, will result in injury, unintentional or otherwise, to a correctional officer.

Mr. Farquhar heard the charges of failing to obey a lawful order, and attacking or threatening to attack another inmate, and commented in Part 4 of the Misconduct Report: "No remorse. Would again fight if should be suddenly returned to population." As a result, Southam was given 10 days with special diet and no privileges.

As for the notation on Southam's Misconduct Report, there was this interchange:

MR. BYNOE. That was the attitude that was assessed by the trier of your case.

A. Well, I guess that is what they put down.

Q. Would you agree with that?

A. I wasn't looking for a fight in the first place.

Q. Once involved you participated, I understand?

A. Yes.

Q. Were you not upset at being the subject of an unprovoked attack?

A. Yes.

Q. Did you convey those feelings to the correctional officer dealing with you?

A. No.

THE COMMISSIONER. Did they ask if you would refrain from fighting in the future?

A. Oh, well, they asked me I believe – I'm trying to remember who let me out. I believe it was Mr. Johnson. But anyway when they ask you when you are getting out of segregation – the natural question that they ask you, "Are you going to cause more trouble?" Now whether you are going to cause more trouble or not you are going to say that you are definitely not.

Q. Yes, but on the hearing in connection with the charge, were you . . . asked whether or not you would stop fighting in the corridors? . . . And do you remember what your answer was?

A. They were very curious as to why the fight had started. More so than usual. I would say. I guess the fight didn't really make much sense because before when I had been in the Don Jail I had been, well, not a trustee, but I was not that kind of a person. I don't cause trouble in jail. I do my time. I am quiet. I don't bother guards, you know. I just as soon go in and out of there without anybody knowing I have ever been in there. No bother . . . you see, one thing maybe you fail to realize, when you have a fight in the Don Jail you don't – Say me and three people got in a fight. You don't say, "That guy started it" because then you would be labelled something that would make

things a lot worse, so I never said, "Well, he started it." I never said until long after I had been out of the jail.

On being released from segregation, Southam stated, he was put in Corridor 11. While he was in Corridor 11 he was told by another inmate that he had been beaten as he came through the showers. "I remember him telling me he got beaten up by the guards when he came through the showers, and I didn't understand why that was so. But he seemed like a fairly nice person and I didn't push the question any further. I remember one other question he asked me, now that I think of it, he asked me what would happen to somebody if they were in for rape and I said well probably they would get the [deletion] kicked out of them, or something to that effect."

Q. Why would you answer like that, Mr. Southam?

A. That's exactly what happens.

Q. Where?

A. In the Don Jail.

Q. In any other institutions? I mean, is that a general statement right across the institutions that you have been in, that anybody that comes in for rape, that happens to them?

A. If anybody gets a chance to get to them that's what happens.

THE COMMISSIONER. Are you talking about inmates?

A. I am talking about inmates. Not guards so much – well, guards, too. But guards, they don't want any trouble, you know. They don't go around causing trouble.

EVIDENCE OF DANIEL CHARETTE

Charette appeared with counsel and explained that his failure to attend earlier in accordance with a subpoena was the result of a misunderstanding and confusion on his part and it was further stated that he at all times wished to appear and intended to testify.

He had been placed in custody and had been brought to the Commission as a result of a warrant. He gave his evidence on Friday, January 31, and was allowed out of custody over the weekend. He attended on Monday, February 3, completed his evidence, and was released from custody on the warrant for failing to comply with the subpoena.

Charette was 19 years of age. Shortly before giving evidence he had been released from custody, having completed the serving of a 15-month sentence for breaking and entering, and "possession of a shot gun". He also admitted to an earlier 15-month sentence. He was out of jail for 16 days between the two sentences.

MR. BYNOE. When you arrived at the jail and went to No. 6 corridor, did you

have any difficulties with the custodial staff?

A. Just hassles between them attacking me and gunning me all the time.

Attacking me and saying things and gunning me off.

THE COMMISSIONER. What do you mean by gunning you off.

A. Looking at me, dirty looks and so forth.

Charette stated that on April 30 he went to a rap session at the chapel as did Bruce Conway, a friend of his. When asked what occurred at about seven o'clock that evening he stated, "A fight broke out . . . and a guy was bleeding . . ." He identified this person as Andrew Geddes. He agreed with the records that indicated he returned from the chapel at 7:15 and that Conway returned at 7:18. He was present when there was a fight between Conway and Southam, but, he said, "I was not paying much attention to that." That was before he saw Geddes bleeding. The fight between Conway and Southam might have lasted two or three minutes, he said. He was unable to recall any great force being applied by either of the participants. He recalled correctional officers coming in and removing them, this also without any undue force.

He stated that it was "roughly 20 minutes later" that he saw Geddes bleeding. He said, "I heard somebody jump on the table, a bunch of racket on the table of feet making a noise, and I seen the guy bleeding after and the other guy walking away."

MR. BYNOE. You heard a noise and you looked up?

A. That's right.

Q. What did you see?

A. I saw a face bleeding.

Q. Did you see what caused it to bleed?

A. I presume a foot.

Q. Did you see what was attached to the foot?

A. Probably a boot.

He identified Geddes from a photograph. He stated that there were seven "coloured" inmates in the corridor at the time and it was one of these who had kicked Geddes. Mr. Bynoe questioned Charette as to whether he was the one who did the kicking.

Q. Well Mr. Charette, it has been suggested in the evidence that you were the person that jumped on the table and kicked Mr. Geddes in the face, and that you did it because you wanted to join Mr. Conway in segregation.

A. That's incorrect.

Q. That's not true?

A. Yes.

Q. What's the next thing that happened as far as you are concerned?

A. After they pulled Geddes out I heard my name being talked out in the corridor by the guards.

Q. What do you mean pulled Mr. Geddes out?

A. When they took him out.

Q. All right. Was there any undue force used with respect to Mr. Geddes in your view?

A. No.

Q. All right. He went out of the corridor, then what happened?

A. The guards asked him what happened and he said he couldn't see, his glasses were off.

Q. Did you hear that?

A. Yes. I was right by the grille.

Q. Now then, what happened after that?

A. After I heard my name being mentioned a few times I went out toward my cell and then the guards all come in and they locked up all the cells and everybody was in their cell and they were going around asking everybody's name. And when they came toward my cell they asked me my name and I mentioned my name and the other guards – there were four guards at the time – said "Here we got the little [deletion] now."

Q. Prior to that did you hear anyone calling out your name?

A. Yes I did.

Charette identified the correctional officers as C.O. 2 Randolph Ralph, C.O. 2 James King, C.O. 2 Charles Casey, C.O. 2 George Carpenter, C.O. 2 William O'Leary, and C.O. 1 Gary Dassy, and he identified Casey as the one who had said, "Here's the little [deletion], we've got him now."

Q. Okay. Now then what happened after they used the words that they did use?

A. They threw my arm behind my back, both arms.

Q. Did they come along and put both arms up behind your back and one officer on each side?

A. Yes, sir.

Q. And you were taken out of the cell?

A. Right.

Charette said he was taken to the rotunda and then thrown down the stairway leading to the basement. As they passed Corridors 3 and 4 he saw Dassy. Dassy asked, "Who have we got there now?" and there was a reply, "You know Charette", and Charette stated that that was when Dassy joined the group.

Charette said that the guards were all around him, at the stairway, and he was thrown down. "I just flew because I was shoved." He stated he was unable to say who shoved him because they were all behind him. Casey was holding one of his arms. Another correctional officer was holding his other arm, but he could not identify him. As for his manner of going down the stairs: "I stumbled down, rolling." He said that he went down "more sideways" although he also described it as "head first". He thought that "rolling down" was the correct description. He maintained that it was a push rather than the guards just letting go of his arms at the top of the stairs. He said he did not have time to grab hold of the railing.

A. Casey . . . come jumping on top of me.

Q. Where did he come from?

A. From the stairs.

Q. Above?

A. Well, I don't know how far above. It took the wind right out of me, then I got down.

Q. What position were you in when you say Mr. Casey jumped on you?

A. More or less on the side.

Q. Standing up or what?

A. No, I was on the floor. On the ground.

Q. Lying on the floor?

A. Yes.

Q. Mr. Casey came and jumped on you?

A. Yes.

Q. Could you tell His Honour if you are able to, how far away from you when he jumped?

A. A couple of feet, I would say.

Q. Was he on the stairway?

A. Yes, I believe he would be.

Q. He would be above you then?

A. Yes.

Q. With what degree of force would you say he landed on you?

A. Pretty hard.

After that he alleged, "They were all down there now, all the guards were down there and they were punching me and kicking me."

Q. You say all of them? The same six as far as you are concerned?

A. The same six, yes. . . . I can't say exactly what each one individual done because I was too busy trying to block myself from the blows.

He indicated he was rolled in a ball-like position to protect himself.

As for the correctional officers, he could not recall Ralph kicking him, but he did recall the key in his hand in the manner of brass knuckles. He could not say for sure whether Ralph struck him with his fist. He was unable to say where the kicks landed, but they were "pretty hard".

Charette could not recall anything that King had done other than that he was "kicking". He said that Casey had him in a "headlock" and punched him on the side of the head with his fist "pretty hard" and both sides of his head were swollen. He could not recall anything in particular that Carpenter had done.

As for O'Leary, he said, "I can recall being kicked in the [back of the] neck by him." He was unable to say as to its force, but said that O'Leary also had a key in his hand.

As for Dassy, he said that "he was the biggest sadist of them all there at the time."

Q. What did he do?

A. He kept on mentioning about, remember the trouble you gave me upstairs.

He had the key and was doing a pretty good job.

Q. . . . What do you mean by that, Mr. Charette?

A. It seemed like he was the one mostly in the football game there.

Q. What did he do?

A. I cannot see exactly what he done but he was there.

THE COMMISSIONER. Well, if you cannot see what he did how do you know he did anything?

A. Just the way he was talking.

Q. What did he say?

A. Remember all the things you have been doing to me upstairs . . . He said that I gave him a lot of hassle upstairs and I think it was the other way around.

Q. Yes. Well, might it be that he was watching the others and making these statements?

A. Then why would he have a key in his hand, Your Honour?

Q. I do not know. I wanted to obtain from you what you saw. Did you see him use the key on you?

A. No.

Q. Did you see him do anything to you?

A. No. . . .

MR. BYNOE. Do you recall stating on a prior occasion that Mr. Dassy in fact actually did punch and kick you?

A. Yes.

Q. Are you able to say that while you are under oath today?

A. Yes, because you are talking about one incident, I am not up to the hole yet.

When Charette re-attended to give evidence on the following Monday morning, he recanted somewhat as to his identification of some of the correctional officers.

Q. Now this morning you mentioned to me that you had a chance to think over the weekend and that there was something troubling you about the evidence that you gave with respect to a couple of guards. Is that correct?

A. Yes.

Q. Well now I am going to produce and put before you . . . the photograph book containing a list of guards. What I would like you to do is to advise the Commission what it is that is troubling you with respect to your statement, your evidence of Friday?

A. Your Honour, I was thinking over the weekend. I had time to think about it. and the more I thought about it the more I realized all of the guards I mentioned there, particularly two specifically that I recall was Casey I believe was one, and Dassy the other. The other ones I can't be sure. I made a mistake. I'm sorry for saying that, but Casey and Dassy I do recall very well.

Charette was then specifically asked about each correctional officer he had named the previous Friday and he continued to say that Ralph was present at the foot of the stairs. "I can't recall exactly what he done, but I do know he was involved in the beating because I recall his face very well."

Q. Can you recall whether or not he punched you?

A. I can't recall exactly what he done, but I do know that he participated in the beating.

THE COMMISSIONER. Well, now, just one moment. You say specifically you recall Mr. Casey and Mr. Dassy kicking and punching you?

A. Yes.

Q. Without mentioning any other names than Casey and Dassy, were there any other guards who kicked and punched you in the room?

A. Yes. There was, Your Honour, but I can't recall exactly which ones did it.

This contradicted in part his direct allegation against Ralph.

Mr. Carter also showed by the records that Carpenter and King, named by Charette in the April 30 incident, were not on duty at the time. Indeed, according to Mr. Carter, King was not at that time employed at the Toronto Jail.

The alleged assault stopped "when someone said 'I think he had enough'. I had trouble getting up, and they sort of give me a hand up." Charette said that there was no "white shirt" present at the time. Then he moved towards the elevator in the new building. He was told that the elevator was not working and as he was going up the stairs, "They said 'You won't be punching out any young kids any more'."

If Charette's statement is correct, that he was assaulted by the correctional officers in the manner alleged, and this was because he had "punched out" a young inmate, then once again we have the correctional officers taking the law into their own hands, and again, if this happened, it was most improper.

Charges could have been laid, as indeed they were, against Charette, and the punishment should have been meted out by the Superintendent or his deputy and not by the other correctional officers no matter how much they may have disapproved of Charette's conduct.

Charette said he was placed in the third segregation cell in 3B, and if this was so he passed Southam's cell which was either No. 1 or No. 2. This supports the evidence that the inmate Southam saw through the cell window was Charette and not Conway.

Charette stated that he walked into the segregation area and then was requested to "put the baby dolls on".

Q. Did anything happen as you were doing that?

A. As I was putting them on I got a smash on the head or something, behind the head, I can't recall exactly what. I could not see because I was putting the baby dolls over.

Q. Do you know who did that?

A. No, I can't see.

Q. You could not see. When you got your head through who was near you?

A. Dassy and Casey.

Q. Anyone else?

A. The other guards I can't recall.

Q. Did you see a white shirt there at that time?

A. No.

Q. Now, what happened after that?

A. As I was going towards the cell they told me to get in there. Dassy gave me a shot on the side of the head. It was swollen there after.

Q. What happened after that?

A. He gave me a kick or something. I can't say that Casey done it but I know Casey was there because I saw him.

Q. Who gave you the kick?

A. Dassy gave me the shot and then he gave me a kick.

Charette said that the kick landed in the shin area. He also alleged assault by Casey, but on further questioning he indicated that he could not recall whether it was anything more than a "bear hug", and this may have been necessary in order to move him into the segregation cell.

As for his injuries, Charette stated, "My whole side was really sore and so was my leg."

MR. BYNOE. Were you bleeding at all?

A. At the time I didn't see myself bleeding but I was bleeding from the side . . .

Q. Anything else about your mouth?

A. No. It was swollen.

Q. Swollen, anything else — was it bleeding?

A. I did not find out it was bleeding until I was in the hole.

Q. Did you find out when you were in the hole that your mouth was bleeding?

A. Yes. I thought it was a loose tooth.

Charette alleged that his side "was really hurting all the time and I thought it was maybe a cracked rib or something and I lifted up the baby dolls and I saw a cut there. I was bleeding from it because the baby dolls was stuck to that."

He also stated that there was blood in his urine. When the male nurse came to see him the next morning he asked to see a doctor. Prior to seeing the doctor he saw the Superintendent's deputy, whom he later identified as Mr. Farquhar. Charette said, "He asked me what happened to me, why I was holding my side. I lifted up my baby dolls and showed him the cut and he said you must have been giving the guards a rough time."

A. I said I did not. . . . I said, I fell down the stairs and five guards behind me or something like that. I recall saying something like that.

MR. BYNOE. You told him you fell downstairs with five guards behind you?

A. Something like that.

Q. Yes, and was it after that he said you must have been giving them a tough time or before that?

A. After that, I believe.

Q. Yes. Now what happened after that?

A. He looked at the charge and he was kind of mad about the charge. He was looking to see who else was in there, if there was another inmate involved.

Q. To see if anybody else was charged with you, is that right?

A. Yes.

Q. And he was advised there was not?

A. That is right.

Q. Now he asked for your side of the story, is that correct?

A. He asked me and I said I did not touch him.

THE COMMISSIONER. You never touched him? You are referring to Geddes.

A. Geddes.

Although the evidence before this Commission would suggest that Charette did kick Geddes, the jail misconduct charge against him was dismissed as not having been sufficiently proven, and Charette was released from segregation.

It would appear that no Misconduct Report was available in view of the charge having been dismissed. Since a report was made out it is suggested that, for the proper safeguarding of evidence and possible reviewing of charges laid, these reports should be kept, even if there is a dismissal.

Charette was referred to the surgery office and was seen by Dr. Dubelsten. The medical report read as follows: "Superficial – skin abrasion of the left lower limb with sore right knee." There is a notation by the doctor that the inmate claimed that he was assaulted by correctional officers. The examination result was indicated as being "unremarkable". In any event he was referred for X-rays to St. Michael's Hospital.

The St. Michael's Hospital clinical history and findings refer to a "20-year-old inmate of Don Jail [who] fell down stairs and injured left side of rib cage. Pain on breathing, moving. On examination chest clear, good expansion. Left lower rib cage, posterior and lateral bruised and tender. No obvious deformities except for painful hard 2 cm swelling. Clinical diagnosis: contused rib cage." There was a recommendation for the administration of 292s and night sedation. The X-rays were negative for fracture and showed "no evidence of injury to the underlying lung or pleurax".

On May 6 Dr. Dubelsten recorded: "Requested nerve and sleeping medication. Denied." Also on May 6 there was a second medical examination. This time Dr. Dickinson indicated that Charette was fit for transfer. This was a transfer to Millbrook. Dr. Dickinson prescribed Darvon twice daily for three days. On May 8, the medical reports at Millbrook showed that Charette was admitted on transfer and that he had a history of bruised ribs in an altercation at the Toronto Jail.

The May 8 notation also indicated bad nerves and a further prescription of Darvon. On May 10 there is a notation "routine physical unremarkable. Fit for full duty." There is no reference in the medical reports to a complaint made by Charette that he had blood in the urine. It would appear from the medical reports that although injury was sustained by Charette it cleared up within 10 or 11 days.

The medical record of Charette, commencing January 8, 1973, is a rather full one with a number of entries some of which are of interest. March 1, 1973, at Guelph, Charette claimed "he is going to kill himself (hang himself) . . . will not discuss his problems further. Has seen a psychiatrist one year ago. Seems quite angry and depressed." He was then referred to medical

segregation for observation. A note on March 2 indicated that Charette denied suicidal thoughts and said it was a misstatement.

On March 5, 1973, there was a reference to a previous car accident and Charette said he was not taken to hospital. He complained of pain in his back. The examination was "essentially negative". On March 20 Charette was admitted to the Guelph Correctional Centre Hospital "because of pain in his hernia". There was the further notation: "He has no hernia. This is just a stall to get out of work." Further medical records indicated insomnia, headaches, bad nerves, agitation, neurotic anxiety, nail-biting, excited easily, use of drugs, and referred to other complaints. It would appear that Charette requested more than the average medical attention.

A Millbrook notation of October 4, 1974, mentioned a complaint of low back discomfort which Charette had attributed previously to a motor vehicle accident, "but now stated he was injured in the Don Jail".

EVIDENCE OF EDWARD ANDREW GEDDES

This inmate was just under 18 when he gave evidence on February 3, 1975, and was 17 when he was an inmate of the Toronto Jail on April 30, 1974. He was a Grade XI student on remand with reference to a charge of theft under \$200, for which he was convicted on May 10, 1974. In October 1974 he was convicted of illegal possession of narcotics, and subsequently of theft over \$200, mischief, and breaking and entering. At the time of giving evidence he was serving a three-month term at Guelph Correctional Centre.

He was a nice-appearing, soft-spoken young man and one could not help but wonder how he came to be in trouble in the first place and how the association with more hardened and experienced inmates would have adversely affected him and possibly led to his continuing brushes with the law.

Geddes related that in April 1974 at about 7:00 p.m. in Corridor 6 Southam was doing "some tricks with a shoe string, and Bruce Conway said that there was something funny about the way he was doing it, and he asked him to stand up".

MR. BYNOE. What happened then?

A. They started to fight.

Q. Who started to fight?

A. Well, they both did.

Q. Did you see who struck the first blow?

A. No, I didn't . . .

Q. Were any blows struck?

A. Yes, there was.

Q. Could you describe who struck the blows and where they landed?

A. They were both punching, punching each other and kicking each other, and they fought about two or three minutes until it was broken up.

It was Geddes' opinion that the fight was serious: "They were trying as hard as they could I guess." In addition to punching, he said, they were both kicking and Southam began to bleed about the face. He said he did not see any cuts on Conway, nor could he recall whether Conway was kicked or punched by Southam. He said eight or 10 officers came running and two or three entered the corridor. He was unable to identify any of the correctional officers. He said that there had also been a separate fight on the floor below. It had started about a couple of minutes before the altercation in his corridor. He said Conway was grabbed by the hair. "They grabbed their arms, their legs, carried them out more or less." Conway was picked up and carried out by three or four guards and Southam was similarly carried out. He did not think that the fight stopped when the correctional officers arrived. "I can't see the guards coming in and asking them to walk out and having them walk out."

Q. Is that because things just don't happen that way at the jail?

A. I think so.

Q. That is because the inmates would not stop fighting if they were told to?

A. They might have stopped fighting but they would be carried two or three feet anyway. They might be let go to walk out the rest of the way.

After this removal, Geddes said that he was reading a newspaper near the front gates of the corridor. He was sitting at the side of a table. He was wearing his glasses and he heard a thumping on the top of the table that he was sitting at.

A. I looked up and at the same time as I looked up I got kicked.

Q. Where did you get kicked, Mr. Geddes?

A. In the face.

Q. And what degree of force was it, can you tell us?

A. Enough. My nose was bleeding.

Q. Your nose started to bleed. What if anything happened to your glasses?

A. They flew down towards the back, three-quarters of the way down.

Q. Which side were you kicked on?

A. I was kicked from this side.

Q. Indicating your left side?

A. Yes, and my glasses flew backwards. . . . The guard had come by now. He was there, he opened the grille, he came in. I went looking for my glasses, someone gave them to me and I went downstairs to the infirmary.

There was an allegation by Charette that Geddes had been kicked by one of the blacks in the corridor. Geddes stated that he had had no trouble with any black in the corridor, but he had difficulties with both Conway and Charette. He shared a cell with them.

In the infirmary, Dassy spoke to him. "Mr. Dassy said that it was

Charette that did it and I said, well, I did not see it, and he pushed me, sort of, threatened me. . . . He just verbally threatened me, that it was him [Charette] and the same thing could happen to me that was going to happen to him [Charette] unless I signed a report. . . . He said that Charette, he said that little bastard did it. I said, I don't know, I did not see it. He said, come on – it's a long time ago – he was threatening. . . . Mr. Charette was still upstairs. I had just been removed from the corridor and I'm on my way to the infirmary."

This threat of Dassy's implied two things, that Charette who was still in the corridor would, in the words of Geddes, "get his ass kicked or something", and that Geddes would be similarly treated if he did not co-operate and indicate that Charette had assaulted him. This time we have Dassy acting as investigator and prosecutor as well as judge and jury.

Q. Now then Mr. Geddes, did you refuse to advise Mr. Dassy and/or anyone else as to who kicked you because you were frightened of breaking the code and fingering or putting the blame on a fellow inmate?

A. If I had seen him I would have said so anyways, but this is because I did not see him.

Q. So that you were really just telling the truth?

A. Yes, I was.

Geddes was being cautious and although he suspected Charette he was careful not to name him since he had not actually seen him do the kicking. He stated that while he was in the infirmary Dassy ran back up the stairs. It would appear that Dassy was anxious to get into action.

Q. What was the next thing that you observed with respect to this incident?

A. Screams from the other side of the dome.

Q. And were you able to hear if anything was being said?

A. Well they were just swearing and he was struggling.

Q. Who was he?

A. Charette.

Q. Where did you see this?

A. I came out of the infirmary and they were coming across the dome.

Q. What floor would that be?

A. That would be the ground floor.

Q. You say they were coming across the dome. Who did you see coming across the dome?

A. Danny Charette and some guards.

Q. How many guards were there?

A. I do not know, they were carrying him, dragging him. There was a big scuffle, going through as fast as they could.

Q. Did you see any resistance being put up at all by Mr. Charette?

A. Oh, yes.

He stated that they stayed on the corridor outside 7 and 8 for a while.

A. I was inside the infirmary but you could hear screaming.

Q. Swearing?

A. A bit. . . . It sounded as if he was being beaten, screaming no, and please, and help. . . . There were grunts and he was screaming pretty loud, like help and things like that.

Geddes was unable to identify the correctional officers who were escorting Charette.

On cross-examination by Mr. Carter, he said that, not having had any trouble with anyone in the corridor except Conway and Charette, and Conway having been removed, he concluded that it was Charette who hit him.

Q. Had you done anything to cause him to kick you?

A. No.

Q. So he just jumped up on the table and let you have it?

A. That is right.

Q. Right in the face? Did it break your nose or just cause it to bleed?

A. Just caused it to bleed.

Q. Your glasses went flying?

A. Yes.

Q. As soon as this occurred the officer on duty opened the corridor, did he, and got you out?

A. Yes.

Geddes indicated that his "head was spinning" as a result of the kick. He estimated that he was in surgery approximately 20 minutes to half an hour. As far as treatment was concerned: "It would have taken about three or four minutes, but I was still there waiting for my head to clear."

Geddes stated that it was about 10 minutes after he entered surgery when he first heard the noise of people coming across the rotunda.

Q. When you saw these people I take it Mr. Charette was putting up a struggle? He wasn't going voluntarily?

A. No.

Q. And the officers were, in effect, forcing him to go across the dome?

A. Yes. . . .

Q. Did you hear anything that was said?

A. Well, shuffling of feet and noises of people screaming.

EVIDENCE OF GARY DASSY

Dassy stated that inmate Bruce Conway "had a very large chip on his shoulder" about being in jail. "He had a very bad attitude towards being incarcerated, to everybody who came in contact with him." Dassy said that Conway exhibited this attitude towards inmates and staff.

The incident involving Conway had occurred at the end of April 1974. Dassy had commenced his employment at the Toronto Jail on April 10 and he said that Conway had been "mouthy all day and we let it ride . . . demanding this and demanding that when he had no business demanding anything and the only reason something was not done about it then was that Mr. [C.O. 2 Charles] Casey and I were suffering from a severe hangover so we let it go and we did not bother about it."

MR. BYNOE. Just to clarify that, what would you have done to take care of it then?

A. We would have taken him out and explained the rules of the jail to him.

Q. In what fashion?

A. We would have explained it verbally first and if he did not understand it then he would have been shown the other way.

Q. What do you mean by that?

A. He would have been taken into the closet, the broom closet, and then open-handed in the broom closet.

Q. What do you mean by open-handed?

A. He would have been slapped in the face.

Q. By whom?

A. Either myself or Mr. Casey.

Q. Or both?

A. Or both, yes, sir.

It is because of statements such as the above that it was necessary to inquire into each incident, to test whether it was part of Dassy's braggadocio, or an expression of his idea of correctional services.

Dassy was working on the landing for Corridors 11 and 12. He said that nothing unusual happened until he received a hand signal from Casey who was on the main floor outside of Corridors 1 and 2 on the west side of the rotunda. Dassy said he already knew there was trouble in Corridors 5 and 6 because he could hear a commotion.

Dassy then went down the stairway on the east side of the rotunda. He said he did not go across to the west side of the third floor because there was a dividing grille leading to the catwalk and it was locked.

Dassy said it was quicker to use the stairway than to find the guard with the key to the grille. He said that by the time he reached the main floor "everybody had moved up to 5 and 6" so that he then went up as well. He said that no alarm bell was sounded.

The officers Dassy alleged as being present were C.O. 3 James MacDonald, C.O. 3 James B. Brown, Casey, C.O. 2 Randolph Ralph, and some others he did not know at the time. He said that when he arrived "Conway was already out of the corridor area. There had been a fight in there. I didn't know what the fight was about, who started it, if it was Conway or the other inmates. I believe it was other inmates he was fighting with because the alarm button didn't sound. So I took for granted that it was a dispute between inmates instead of a dispute between guards and inmates."

MR. BYNOE. Was there a different procedure followed?

A. Well, if a guard is being attacked or there is a fight between an inmate and guard, automatically the alarm button would go, and . . . every available guard that is not doing something would . . . respond to the call, including like if there was two guards on 11 and 12, one would leave his post while the other one took over.

Dassy said that by the time he had arrived at the landing "everything that had transpired was over" and Conway "was outside on the landing . . . All I know is he was going to be taken downstairs to the segregation cells. On the way down ——"

Q. How did you know that?

A. Well this is standard procedure from what I know of the jail where the fight started.

Q. The normal thing is to segregate the combatants?

A. Yes, but to this day I do not know who the second combatant was.

Dassy said MacDonald had Conway "by the biceps holding on to his arm". As they were proceeding down the stairs he was following and some of the other officers were dispersing back to their stations, and when they arrived on the main floor there remained Ralph, J. B. Brown, and Casey. As they were in the vicinity of the rotunda, "Corporal MacDonald turned to Conway, there is quite a difference in size there, he looked down at Conway and said what was that all about . . . Conway turned and looked up at MacDonald and with a sneer on his face, I cannot recall what he said, but MacDonald just turned and dropped him with a punch to the side of the face . . . It was a very strong blow because Conway went down."

Q. Did Conway go down to his knees or to the floor?

A. This I cannot remember, sir, because all of a sudden with that there was a convergence on him by these three officers, four officers all told.

Q. Who were they?

A. Mr. Ralph, J. B. Brown and Charlie Casey.

Q. Who else?

A. MacDonald was there too.

Q. What about yourself?

A. I could not get near them.

Q. They beat you. All right, then what did you observe happen then?

A. By this time they tried to ——

Q. Before you go into that did Officer Casey or Ralph or MacDonald or J. B. Brown strike the inmate Conway?

A. Yes, sir.

Q. They struck him?

A. Yes.

Q. Who struck him and where?

A. I cannot recall who struck where and who struck which, I mean if you had

seen these three people ——

Q. Now can you advise us who struck blows and where?

A. He was being punched, kicked and kneed.

Q. Can you now tell me the name of any person that struck or punched Conway?

A. All four that I have named, sir.

Q. All four struck with their fists?

A. Yes sir.

Q. Can you give us any estimate of the number of blows that were struck by the various officers?

A. No, sir, I can't.

As for the kneeling, Dassy said he could not recall who did it. "It is hard to say because it was like a football line converging and you just don't know who is doing what . . . I think they all did it. I know they all did it because knees, hands, everything was in movement and Conway was in the middle. . . . It would strike him anywhere from his thigh up to his kidneys and if he happened to fall over a bit it would hit him also on the chest and in the back area."

Q. Now then, you have also said that these guards kicked Mr. Conway?

A. Yes, there would be kicks thrown at his legs, ankles, knees.

Q. Was that done for any purpose other than to apply force?

A. No, it was done purely from what he had said to Mr. MacDonald.

THE COMMISSIONER. You indicated that you had not heard anything said by Conway to Corporal MacDonald, it was just a sneer?

A. You could see the sneer, it was the type of sneer, sir, that you would not tolerate or anybody else I think would not tolerate.

Q. There must have been something more than a sneer.

A. There was something said.

Q. But you were not able to hear it?

A. As soon as it was said, and the sneer, it was just a split second, MacDonald had just whirled and punched him.

Q. Was this just said to Corporal MacDonald? It was not said to the others, I take it?

A. Not that I can recall, sir, no.

Q. Why would the others then react in the way you mentioned?

A. Because of Conway's attitude plus the fact that the Don Jail has a reputation of taking care of people like Conway who have the idea that they are going to run the jail. You see, where they came from other institutions, it is not like the Don Jail. It is an institution where they have their little groups of complainers that can form committees and complain about the food, complain about not getting to watch T.V. and that. In the Don, they don't have this, and it is not tolerated by the guards or at that time by the senior officials in the Don.

As to the above, again this was an impression that Dassy wished to make of inmates being cowed to discipline and the jail being run on exceedingly strict lines. This generalization also has to be analysed in the light of the

evidence in connection with the individual allegations. Dassy was pressed on this point and recanted a bit from the general impression that he may have been attempting to make. In fact, on being pressed further as to whether Conway had taken any physical action himself, Dassy indicated that he was not in a position to know:

MR. BYNOE. Would you have been in a position to see at all times if Conway had in fact endeavoured to strike a correctional officer?

A. No, I would not have been in that position because of the size of the people involved in this.

However, Dassy then went on more dramatically to describe the blow: "Conway, to my knowledge, and from what I could see, did not retaliate after the first blow because it was a devastating blow."

Dassy said that although he was eight or nine feet behind MacDonald and Conway he saw the sneer on Conway's face when he turned to look up at MacDonald.

Q. As they went south and then down the stairs into the basement, you went northerly and up the stairs?

A. Yes sir . . . Conway was screaming, "Don't hit me any more, don't hit me any more," and they were telling him to shut up and they kept, I presume, **pounding him.**

Dassy's presumption that the correctional officers kept pounding Conway was, of course, speculative testimony.

Q. You could not see but you heard him yelling?

A. And screaming, yes, sir.

Q. And screaming. Can you remember any of the words that he used?

A. "Please don't hit me any more; you are trying to kill me." I think these were the words he used. I can't be absolutely positive because there was a lot of screaming going on at the same time by Conway.

THE COMMISSIONER. Mr. Dassy, I don't think you should hazard a guess because you might be guessing incorrectly so if you would relate only what you do recall.

A. I do recall him screaming and hollering, "Please don't hit me any more."

Dassy said he returned to his own post on the landing outside 11 and 12. "I was there about 15 minutes and Casey and the rest of them had come back from the hole by this time and I went down, I guess it was to about 9 and 10 and I was talking to Casey and I asked him, I said, where is Charette." . . .

Q. What caused you to make that inquiry?

A. Because, as I said previously, Conway and Charette both gave Mr. Casey and I problems on previous days.

Q. In what fashion?

A. Being mouthy and being demanding. They demanded this and they demanded that.

Q. In what fashion did they demand?

A. In a very surly manner. It wasn't, you know — it was "Gimme, gimme. I want this and I want that and I don't give a damn what you try and do to me." And I knew that Conway and Charette were close friends. They stuck together in the corridor and they more or less tried to use their weight in that corridor . . . to run things. . . . Conway was over to the hole, and I was sure that Charette was going to start it up to show other inmates that he wasn't afraid of the guards either and he was going to join his friend. And sure enough, within about 20 minutes he did. . . .

Q. How did you know that?

A. I could hear it.

Q. What did you hear?

A. Hollering and screaming going on.

Q. Yes.

A. Out comes Ralph and Casey and J. B. Brown, and I don't believe Corporal MacDonald was there at that time, but quite a few more guards ———

Q. Can you remember the names?

A. I believe one of them was Mr. [C.O. 2 William] O'Leary.

Q. How did it happen that you left 11?

A. Because I was waved again by Mr. Casey.

Q. All right. Where was Mr. Casey?

A. In approximately the same position he was in the first call.

Q. On the first floor of the old building?

A. Yes, sir.

Q. Just inside the rotunda, outside the landing that leads to corridors 1 and 2, is that correct?

A. Yes, sir. . . .

Q. [The other guards] were coming from the hall area that is just beyond the entrance to the main building?

A. Yes, sir.

Q. And where would persons coming from that area, guards, normally be?

A. They would probably be in the tea room, sir.

Q. So that they would be persons who would be free of specific duties at that given time?

A. Yes, sir. They are probably in there having a coffee break . . .

Q. Now then, you were up on 11 and 12 corridor; that would be on the third floor . . . of the old building, on the east side?

A. Yes, sir. . . .

Q. All right. You covered the distance from 11 corridor down two flights of stairs, across the rotunda, and where were Casey, Ralph, and J. B. Brown when you arrived?

A. Everybody was up on 5 and 6. Charette and the rest of the inmates were still in 6 corridor.

Dassy said there were four officers there and himself, but no "white shirt".

"They were getting an inmate that had been kicked in the face – he was an inmate – he wore glasses . . . I know it was Charette – put the boots to this kid as he was lying on the floor reading a newspaper."

Q. Now just let me get to that, with respect to how this inmate was injured, you did not see what happened?

A. No, but the inmate told me how it happened.

Q. When you went there what did you observe?

A. I looked down and said to Mr. Casey, "Charette". . . . Charette was down on the back of the corridor somewhere . . . I believe the other inmate was being helped to come out, he had blood streaming down the side of his face.

Among the duties and problems of correctional officers is that of protecting inmates from attack by other inmates. In the more crowded corridors there is a greater possibility of attack, particularly in the old building where observation by correctional officers is geographically not as good as from the perimeter walk in the new section.

"I said to Mr. Casey, 'Charette', and said it in a manner that wasn't quiet so I imagine everybody there heard me. . . . One of the guards, I do not know which one, said, 'Get up Charette.' Charette came, he knew . . . he did not protest in any way, shape or form because ——"

Q. Had you spoken to the injured inmate before you said that?

A. No, I hadn't, sir.

Q. What happened then, please?

A. He was grabbed.

Q. By whom?

A. Again sir, the guards that were involved in this, Mr. Casey, Mr. J. B. Brown and, like I say, when you are in a position like this there is everybody grabbing for the man and you just do not stop to see, you know, who is grabbing.

Q. Did you grab?

A. No, I did not, I was pushed back . . . I knew where he was heading, he was going to the hole, this was a sure bet. And I believe that he was either shoved or he fell from here to 3 and 4.

"Either shoved or he fell" is another example of Dassy's innuendoes.

Q. Are you able from your own knowledge, and your own recollection and your own observation to say whether he fell or he was pushed?

A. In my own opinion I would say he was pushed.

Q. Who pushed him?

A. It would be one of the three guards. . . . That would be either Mr. Casey, Mr. Ralph, or Mr. Brown because they were the closest to him. . . .

Q. Could you describe how he went down the stairs?

A. Like a person who is trying to grab on. He landed on his back, I believe it was when he hit the bottom of the stairs. There was about 20 stairs in all I think, steel stairs.

This would bring him to the landing at Corridors 3 and 4. Dassy then said:

A. He was picked up and he did not appear to be injured. He was forcefully led down the rest of the stairs to the rotunda. At this time everybody was going about their different ways except for Mr. J. B. Brown, Mr. Casey and Mr. Ralph and myself, and there was a senior officer but I do not recall who he was. . . .

Q. What did you do then?

A. As soon as we got to about here we started to hit Charette, myself included.

Q. Before you describe what happened in the rotunda and entranceway to the landing outside the corridor, would you advise me whether or not you had spoken to the injured inmate.

A. Not at this time.

Dassy once again implicated himself and seemed to delight in such recounting. At the same time he usually implicated others.

I believe there was a strong resentment among the correctional officers of Charette's attack on an innocent inmate. Certainly Dassy assumed the role of the other inmate's avenger and I believe that he did strike Charette, particularly while Charette was being escorted by other correctional officers.

Another possible explanation for Dassy's hitting of Charette (which I accept as having occurred) was a desire for acceptance by the other correctional officers. This is seen also in his trying to work harder, his being available for extra duties, and his drinking with "the boys" at the Legion after work.

Mr. Bynoe's examination of Dassy continued:

Q. What happened when he went through the rotunda?

A. He was being propelled through the rotunda. All of us, we were moving pretty fast and as we got to here —

Q. By there you are indicating the landing outside corridors 7 and 8 on the first floor?

A. Yes, sir.

Q. And what happened then?

A. We then proceeded to punch and kick Charette.

Q. Who did what? Can you describe what happened?

A. I know I threw about five or six punches myself.

Q. Did they land?

A. Yes, they did, sir.

Q. And where did they land?

A. On his chest and stomach. . . .

Q. What degree of force did you use with your blows?

A. A fair degree of force, sir.

Q. What effect if any did it have or appear to have?

A. I was not looking to see what effect it had on him.

Q. Who else punched Charette that you can —

A. Mr. Casey, Mr. Brown, Mr. Ralph.

Q. All with their fists?

A. Yes, sir, and he was being kicked as well.

Q. Now, you have described the punching. What was the force of those blows by the other persons? Could you ascertain that?

A. They were as hard if not harder than what I was throwing, sir.

Q. Had Charette done or said anything that caused the blows to be hurled at him?

A. No, sir.

Q. Done nothing?

A. No, sir.

Q. Said nothing?

A. No, sir.

Q. All right. Now then you indicated there was kicking?

A. Yes, sir.

Q. Did you kick Charette?

A. No, I did not kick Charette, sir, but kicks were — I seen the kicks but I could not tell which legs were throwing them. He was being kicked from about the shins down. . . .

Q. Did there appear to be some degree of force behind the kicks?

A. Yes, sir.

Q. What degree of force would you say?

A. Enough to leave a bruise, sir.

Q. At that time, did Charette do anything to retaliate?

A. Not that I can recall, sir, no.

Q. What happened after that?

A. Except, you know, that he was trying to cover himself which anybody would do.

Q. What happened after that?

A. I was told to go back to my 11 and 12 and they could take care of it from there.

Q. Charette was not in the basement at that time?

A. No, he was not, sir.

Q. Was Charette fighting at any time?

A. He could possibly have been fighting in the basement, sir.

Q. But not when you were there?

A. Not when I was there. . . .

Q. At some stage during the beating of Charette that you have described, did it move from the area of the landing here to the top of the stairway?

A. It was on the move all the way. . . .

Q. Did you see how Charette went down the stairs from the area outside of 7 and 8 corridor to the basement?

A. Again I say about halfway down the stairs he either fell or he was pushed because I was on these stairs going up and looking down. . . . About that time they said go back up. I recall giving another punch at him, I had hold of him with one hand on his shirt.

Q. You are indicating your left hand?

A. Yes, sir.

Q. And holding his shirt?

A. Yes, sir.

Q. And your right hand is clenched up in a fist?

A. And I hit him on, I don't recall which shoulder.

Q. On the shoulder, one shoulder?

A. One shoulder.

Q. What effect if any did that seem to have on Mr. Charette?

A. I could not say, sir.

Q. You did not see any result.

A. Because he had his back to me, I could not see.

Q. You hit him from the back?

A. From behind, because he was being led to the stairs. He was in a circle and he was in the middle.

Q. If he was going away from you and you were holding on to his shirt, were you trying to pull him back towards you?

A. No, sir. I was wanting to let him go. I wanted to get back up to 7 and 8 and I believe from there, when I let him go, you know how you give a shove to let go, this is what I did.

Q. You gave a shove from behind?

A. Yes, sir.

Q. And then what happened to Mr. Charette?

A. They were still pounding each other at the stairs and I can't recall if I was there when the pounding — but I do know he went down those stairs and I don't know if I was involved in the pushing or not, I cannot say for sure.

If Charette was pushed down the steps from Corridors 7 and 8 to the basement, it may be that it was Dassy who did it. Dassy said there was no plan by the others and himself to push Charette down these stairs.

Q. You then, I gather, went around the stairway and started going back up to 9 and 10?

A. Yes, sir.

Q. And then to go further to 11 and 12 where you were working?

A. Yes.

Q. Now, you looked through the stairway —

A. Yes, sir.

Q. What did you see?

A. I could see — and I could not see who the guards were. It had to be the guards I had named still punching and kicking Charette and Charette was screaming to the point where the whole jail heard him, including the people in the chapel. . . . I cannot recall right now what he was saying but the screams were to the point where the whole jail and I mean the whole jail heard.

Q. Where were you when you heard this?

A. This time, I had gotten back up to 11 and 12 and I could still hear it. . . .

Q. And you indicated you could still hear what?

A. Charette screaming.

Q. Yes.

A. "Stop it, you are trying to kill me, or you are killing me", and the screaming just kept up.

Q. What, if anything, did you do?

A. I turned the TV sets up as loud as I could.

Q. You mean the volume?

A. Yes, sir.

Q. Why?

A. Because the social worker, Carol Eldridge, was in the chapel and came out.

Dassy said that there was a hockey game on television at the time. The jail records indicate that the Charette incident occurred some time between 7:15 and 7:45 p.m. Later in evidence, Mr. Carter indicated that the hockey game did not commence until 8:30 p.m.

Dassy said that when he went to speak to the inmate who had been struck in the face (this would be inmate Andrew Geddes) he was told by Geddes that he was lying down reading a newspaper when he was kicked in the face.

Dassy said: "So I said, 'Come on, you know who kicked you.' He said, 'Yes, I do,' he said, 'but I can't say anything.'"

Q. What happened?

A. I said, "Well, why?" I said, "Nobody is going to . . .", you know.

Q. No one is going to what?

A. "No one is going to point a finger at you and say, yes, you squealed on another inmate," but he said, "I can't." I said, "Lookit, you seen what happened to Charette." I said, "It can possibly happen to you. Now who was it?" And he said, "Charette."

This was, of course, not the duty of Dassy who seemed to fancy himself as the jail factotum. Nor was it up to Dassy to threaten the inmate. "He said, 'Yes, it was Charette, but I am afraid', he said, and he didn't want to go back to 6 corridor because he was too young a kid to be in that part of the jail with that type of people that were in there."

THE COMMISSIONER. . . . you had gone up, back to your station?

A. Yes, sir.

Q. Then why would you go down to interview this other inmate?

A. Because I wanted to satisfy myself to the fact who had done it to him, sir. I knew myself who had done it, but I wanted it confirmed.

Q. Yes. Did you have to get permission from anyone to leave your station?

A. No, sir. . . . There was another guard up there on 11 and 12 with me, so I didn't leave it deserted.

Q. No, I am not inferring you left it deserted.

A. No.

Q. But what I am interested in, whether this was something you were initiating yourself or whether you had been asked by anyone.

A. No, I initiated it myself.

Q. Or you were under any duty to do it?

A. No, sir.

EVIDENCE OF DONALD ALBERT ROTHWELL

This ex-inmate was not available to appear before the Commission. Mr. Bynoe explained that Rothwell would not be of any assistance in connection with what occurred on April 30, but he had seen Charette two days after the incident. Since the statement obtained from Rothwell by the Commission investigators had only limited application, it was admitted on consent of Mr. Salem and Mr. Carter without any agreement as to whether it was factually correct.

Mr. Bynoe said that Rothwell was 51 years of age, was on medical welfare, and had been in the Toronto Jail about 40 times since 1941. He quoted Rothwell as having told the investigators: "Danny Charette got it in the jail. I didn't see him get it, but I seen him in the hospital. Charette was in 6 corridor and I was in 6 at that time. I think it was May of this year. . . . I seen Charette two days later with kick marks all over his body. This was in the hospital. Charette is only a kid of about 20 years old, roughly."

EVIDENCE OF CHARLES EDWARD CASEY

C.O. 2 Casey's evidence was that he was not scheduled for duty on April 30. Nevertheless, the records indicate that he worked both the morning and afternoon shifts and that he was working at the front door of the old building.

Casey described some of his duties when he was acting as front door guard.

A. Well, you look after the people coming in. On that particular night there was a group session in the Chapel and I looked after the people that came in, made sure they signed in . . .

MR. BYNOE. What else do you do on the 3:00 p.m. to 11:00 shift?

A. Well . . . there's the alarm system there and you look after that. If it rings you shut it off. And there's a grille there. Sometimes if there is no grille man you look after the grille and you open up to let people in. . . .

Q. Now then you indicated that an alarm rang. Do you recall the approximate time, Mr. Casey?

A. It was somewhere around 7 o'clock or shortly after.

Q. And were you able to ascertain where the origin of the call was?

A. Yes, there was a small flap that fell down in the box that said 5 and 6.

The box that Casey was talking about was part of an old signal system somewhat like those used at one time in residences.

Casey explained that the figures indicated the area of trouble, and he would then have to relay this information to the correctional officer who was working another set of grilles, between the offices and the rotunda.

He said that he did not respond to the alarm himself. He was unable to say whether he heard another alarm later.

Casey further stated that he did not recall going to Corridor 6 at any time and using the words, "Here's the little [deletion]. We have got him now." He did not recall Conway's name but he was able to recognize his photograph. As for Charette, he had known him for approximately a month and a half to two months, but not by name.

Despite the records of 3B segregation, he said he did not escort Charette to segregation.

Casey was asked about the evidence of Gary Dassy that Ralph, J. B. Brown, Casey, and Dassy all punched Conway with their fists and kicked and kneed him and that this was in the rotunda area. Casey's reply was: "Well, I think he has got a great sense of imagination. He seems to put me in every allegation that he makes. I know where I was that night. I was on the front door of the old building. I left twice. I left once for my lunch and once for my tea break. I answered that alarm on the wall. I shut it off, and there is no way I went through the grilles and Mr. Ralph and I left the place unattended and went to answer an alarm. That is it. That is all I can say."

Casey was then told of the evidence of Dassy with reference to Charette, that Dassy had told Casey to watch out for Charette as he, Dassy, anticipated that Charette would act up. Dassy had also stated that there was a further commotion in Corridors 5 and 6, that an alarm was again sounded and that Ralph and J. B. Brown came out of the tea room area and that Casey waved to Dassy who was on Corridors 11 and 12 and he joined the other correctional officers on Corridor 6.

Casey's answer to this was as follows:

A. I was on the front door of the old building. I had two breaks that night, like I said before, my supper and my tea break. Now I never answered any alarms.

The first one I was on the front door of the old building. I can't remember a second alarm going. If I was there I could have possibly been out in the dome and escorted him across to the B landing. If I did I would have remembered if anything like that had happened, and I don't remember anything like that ever happening, and that is why I can't remember that incident.

Q. Well, if you had escorted him across the landing by any chance, nothing like that happened? Is that what you are saying?

A. Well, if it had happened, and if I did go and something like that had happened, I would remember it.

Q. I would think so.

A. Well, I would remember it.

Q. All right.

A. Not every day you do something like that.

Q. Well, are you indicating by that answer that if you had participated in applying force to an inmate to that degree by punching him and kicking him that you would remember it?

A. Yes, sir, I would.

Q. Now did it happen as far as you are concerned?

A. No, it never, sir.

Q. I just don't want any ambiguity about that Mr. Casey.

A. Right, sir.

Casey was also asked about the allegation of another beating of Charette at the bottom of the stairway and his reply was, "If I took Charette across to the B landing on escort, and if anything at all would have happened, there would have been a report put in about it, and there would be one in the jail. Now I am saying there is no report in the jail and it never happened."

Following this, and in view of the answers given by Casey, the Commissioner asked, "Do you know whether or not you escorted Charette?" Casey replied, "I do not, sir."

Casey was advised that neither Conway nor Southam had indicated that he was involved, but Charette had named him in connection with the statement, "Here's the little [deletion]. We have got him now." Then, Charette alleged, Casey escorted him with his arms up behind his back, and there was the episode of the push down the stairs from Corridors 7 and 8 to the basement area and of Casey falling on top of Charette at the bottom of the stairs and, further, the episode in the photography room where, Charette alleged, he was punched and kicked, and further that when he was putting on the baby dolls in the segregation area Casey took a couple of shots at him. Casey then stated:

A. What can I say, sir? I know my name is in the B landing book, right?

THE COMMISSIONER. Yes.

A. And I am telling you that I don't know whether I was there.

Q. You don't recall?

A. That's right.

Certainly the impression that Casey wanted to give was that he had spent all his time, save for two breaks, at the front door of the old building. However, he was in this dilemma, that the records of 3B segregation indicated that he had been one of the officers to bring Charette into the segregation area. Casey was aware of this when he gave evidence and he, therefore, could not deny it. It appeared a bit odd, to say the least, that he could not recall taking Charette to segregation in view of the events that had taken place that evening and particularly since he knew Charette.

In fact, Casey had some opinions about Charette. When he was asked about Charette's evidence that Casey was always giving him "some kind of looks", Casey answered, "Well, that was quite true. You see, he was transferred into the Toronto Jail. He was put in 5 or 6 corridor, you see, and I was working that corridor pretty regularly at the time. And he always had a habit of hollering 'Hey you; hey you, get me this; hey you, do that.' And on a couple of occasions I have hauled him out of — not hauled him out of, I should say opened, the grille, brought him out, and I have told him, you

know, 'You call me "Mr. Casey" or "Sir" don't call me "Hey you",' I said, 'because I'll charge you so fast it will make your head spin.' And he always kept giving me these funny looks, and I just looked back just as funny, you know. So this could be the looks, you know."

The above indicates that Charette was an inmate who gave Casey some problems. It is most unfortunate that correctional officers have to take the abuse from inmates that they do. It may well be that, if Casey had ignored Charette, it would have passed. On the other hand, he apparently insisted on being called "mister" or "sir" and this, obviously, would rub someone like Charette the wrong way and would aggravate the situation.

The answers given by Casey to Mr. Salem are of interest.

A. Well, my first recollection I had was that I never left the front door, and I still maintain that. But my name is in the 3B log book, and this is where I can't, you know, I just don't know what happened.

MR. SALEM. So that you can't specifically recall . . . being in the 3B segregation?

A. That is right, sir.

Q. May I read your evidence that you are not disagreeing, though, with the notation in the 3B log book?

A. I am not disagreeing with it.

Q. No?

A. But what I did say, sir, was that if I was there, I would have remembered all these allegations that has happened on the way there.

Q. I appreciate that. You were saying that although you do not personally recall being in 3B segregation, that in accordance with the 3B log book you were there?

A. Yes, sir.

Q. So that on your evidence you must have been there, although you don't recall it?

A. I don't recall it, no.

Q. And to be fair, you did testify that you would have recalled being there certainly if you had partaken or witnessed this type of allegation.

A. That is right, sir.

According to Casey's evidence, he had not left the front door and, if it was not for the 3B log book, he would not even have made the admission that he had been in the segregation area. Further, he indicated that he would have recalled being in the segregation area had the incident occurred as alleged by Charette. Therefore, if one were to make a finding that the incident occurred as alleged by Charette, the conclusion would be that Casey was purposely misleading the inquiry in saying that he had no recollection of being in the segregation area.

Casey was also very emphatic on more than one occasion that he and Ralph could not both at the same time have left the posts they were manning at the front of the first floor of the old building.

It was indicated in the 3B segregation log that Ralph assisted in escorting

Southam, who entered segregation at 7:35, and that Casey took part in the escorting of Charette, who entered segregation at 7:45. Both entries were, apparently, made by C.O. 4 McKay, whose name also appears.

It appears remarkable that Casey could remember that he was never relieved at the same time that day as Ralph and yet he could not remember being in 3B segregation on escort duty.

MR. SALEM. Am I interpreting your evidence that there was no way to your mind that both of you could have left at the same time?

A. That is right, sir.

Q. There was no way to your mind that both of you could have been relieved at the same time?

A. I know for a fact we never were relieved; we were not relieved at the same time.

Q. How do you know that?

A. Well, because I can remember.

THE COMMISSIONER. You can't even remember going to 3B, so how can you say that?

Finally, Mr. Salem gained some acknowledgement from Casey that the records indicated that it looked as if he and Ralph were relieved at the same time.

MR. SALEM. So it would seem that although there is a 10-minute span between Mr. Ralph being noted there and you being noted there, it would seem that you would have both had to have been relieved because it would have taken some time for you to escort this prisoner or inmate there before your name was written down there? Doesn't that sound logical to you?

A. Yes, it does.

Q. So that according to the notations in the 3B log, then, it is obvious that both you and Mr. Ralph had been relieved around that time together, unless you have some other explanation?

A. Well, that is the way it looks, sir.

EVIDENCE OF RANDOLPH WILLIAM RALPH

This correctional officer was 27, his height was 5'8" and he weighed 265 pounds. He joined the Ministry of Correctional Services in October 1969 and had a Grade XI education. He came from a town within 50 miles of Toronto. He mentioned having been attacked by inmates on two occasions. On one occasion he was away from work for three days.

C.O. 2 Ralph did not recall being on duty on April 30, 1974, but when shown the records he agreed that he was on both the afternoon shift and the

night shift. His knowledge of the allegations and events of April 30 appeared to have been gathered from talking to other correctional officers and from reading the newspapers. He recalled an alarm going off and at that time he was in the tea room. He believed that he was directed by Casey, who was at the front door, to trouble at 5 and 6 landing. He said that he saw C.O. 3 James MacDonald with Conway by the arm.

MR. BYNOE. What, if anything, did you do?

A. I wasn't doing anything. I was just standing there. There was nothing for me to do. . . .

Q. . . . And what did you observe?

A. Mr. MacDonald was escorting the inmate through the dome and he had ahold of his right arm, and they were just halfway through the dome I think when the inmate broke away from him and started to go over to the medical records office. Maybe he stepped two or three feet and Mr. MacDonald grabbed him by the arm again and escorted him through No. 7 and 8 corridor.

Q. Through 7 and 8 corridor, all right. Did you accompany them?

A. No. I can't remember if I accompanied them or not.

Ralph said that he had no recollection of escorting Southam to segregation and it was not often that he had escorted people. He said that over the last five years he had escorted an average of 10 a year.

Ralph was asked about the evidence given by Dassy which involved him in an assault on Conway, and he replied, "Well, it is not true."

Ralph's evidence seemed to indicate that the normal procedure was that the man at the front door and the one at the grilles would not be relieved at the same time. The relief man would relieve first one and then the other, although if they had extra staff in the jail the two of them could be relieved at the same time. Ralph denied striking Conway in the rotunda in the presence of MacDonald, or kicking him. He was asked as to Dassy's reason for implicating him.

A. Maybe because I am big. He probably seen me working in the jail. He might have seen me out in the dome.

Q. At that time or subsequently, before the 30th of August, was there any bad feeling between Mr. Dassy and yourself?

A. No, I don't think so, not that I knew of anyways.

Q. Between the 30th of August and the 30th of September when I think the first series of articles appeared in the local paper, had anything transpired that would lead you to believe Mr. Dassy had any ill feelings towards you?

A. Well, he asked me to help him move a few things out of his apartment.

Q. Did you help him move?

A. A few things, yes.

Q. I don't suppose that would give him any reason to have any ill feelings towards you. You did a favour for him, did you not?

A. Yes.

Q. I gather then there's just no reason you could think of?

A. I refused to move a TV set for him.

Q. Did he react to that in any fashion that would lead you to believe he would make a serious false accusation against you, Mr. Ralph?

A. No, he just said he paid for this and it was his. I told him I was not taking it.

Of more interest was the answer that he gave in connection with the allegation of Conway.

Q. Well, now Mr. Ralph, can you think of any reason why a man by the name of Conway whose photograph is in front of you would identify you as being the person who came in with Corporal MacDonald and kicked him and punched him in the segregation cell?

A. Well, the man says he was kicked and the man says he was punched so somebody had to do it, did they not? He could not do it by himself.

THE COMMISSIONER. There is another alternative and that is that he was not kicked or punched. It doesn't mean that it had to be done.

A. I don't think I have had any dealings with that person.

Q. You know of no reason why he would make a false accusation knowingly against you?

A. No.

These answers almost indicate an acknowledgement by Ralph that there was excessive use of force at the Toronto Jail. Ralph does not take exception to the allegation of Conway but merely states that he was not the one involved.

As for Charette's statement that Ralph was among those that beat him and had keys in their fists, he indicated that he did not recall the matter when interviewed by the Commission investigators. Nor did he recall it at the time of giving evidence. He further stated, "Well I did not have a key because I was on the grilles . . . and when relief came I would have to surrender the keys to my relief."

In view of the evidence of other correctional officers, one would have to conclude that Ralph does not have as good a memory as other correctional officers, or that the incident was a minor one and there was nothing to impress it on his mind, or that he was not being completely candid.

It was indicated in Ralph's evidence that there were discussions about these allegations among the correctional officers.

MR. BYNOE. You do not even recall — you cannot be sure in your own memory that you were on the grille on April 30th. You cannot identify the inmate yourself. This is information you are advising us about from what people told you?

A. Yes, what I have been told. That is correct.

THE COMMISSIONER. Why was it necessary for people to tell you, how did that come about?

A. I do not remember this taking place . . . I know I was on a tea break and I know there was trouble on 5 and 6. I remember that.

Q. That is as much as you remember yourself?

A. To remember what time the alarm went off and what time I went from there

to there I cannot recall.

Q. How did it come about that people were telling you what you did and what you were supposed to have done?

A. My name has been mentioned and they were talking about it.

Q. When you say they, to whom are you referring?

A. My colleagues.

Q. How many?

A. Two, three, four.

Q. Who were they?

A. I think Mr. Casey, I think Mr. Peake, they are the ones I can remember, and a few other ones who I can't recall. . . .

Q. How long ago was this?

A. Since this started, since September when it started in the paper.

Q. Yes, very well. And there was some discussion and some of them were telling you what you were doing and where you were?

A. Somebody said, "Do you remember the incident?" And I says no I cannot remember the incident. I know there was trouble on 5 and 6 and I had to go to help because I was on the tea break.

Q. Did you go to 5 and 6 when you went to help?

A. No, I don't think so. I think I just went to the dome and Mr. MacDonald was bringing this inmate down across the dome.

Q. You only remember the one inmate on that date? I mean, if that is the situation, say so, but ——

A. That is all I can remember, the one inmate.

Q. That is the one Mr. MacDonald was bringing?

A. Yes, by the arm and he broke away from Mr. MacDonald across the dome and Mr. MacDonald grabbed him.

Q. As far as you personally were concerned, that is the only incident that you have a personal recollection of, is it? On that day? . . .

A. Yes.

There was not necessarily anything nefarious in the discussions among correctional officers and one would expect, if there were certain allegations in the newspapers, that the correctional officers would discuss matters among themselves. If what Ralph said was correct, that he could not recall the incident, then probably there would be discussion in connection with the allegation. This is not unusual, but it does mean that where this has happened the evidence of the correctional officers must be looked at carefully, and it is not just a matter of counting heads.

EVIDENCE OF JAMES HUGH MacDONALD

This correctional officer was born in Scotland. He was married, with four children, height 6'1", weight 190 pounds. He was 36 when he joined the

Ministry in September 1966. At the time of giving evidence he held the rank of C.O. 4 and in April 1974, at the time of the occurrences involving Conway and Charette, he was a C.O. 3.

Although the segregation records indicated that MacDonald was one of the escorting officers, he said that he had no recollection of this. "The jail records definitely indicate that I was one of the escort officers. That I can't deny."

Dassy's allegation involving MacDonald was put to him, namely that in the rotunda area, he hit Conway on the side of the face with his fist and Conway dropped and his legs wilted from the blow, although Conway himself did not indicate that, and, in fact, denied that he "was ever dropped". It was Conway's evidence that MacDonald had "open-handed" him "on the right side of the face", because Conway had sneered at MacDonald and further that MacDonald and Ralph as well as another unidentified correctional officer had kicked him and that this occurred in the segregation cell area.

MR. BYNOE. What do you say about the allegation then of Mr. Dassy, that while in the rotunda you hit Conway on the side of the face with your fist with the force that he has described to make him wilt or go down?

A. I would certainly remember that if I had to use force on an inmate, I would remember. The only part of the statement I do agree with is that I had the inmate by the arm. I always escort an inmate to the segregation area holding him by the arm here.

Q. By that, do you now indicate that you remember?

A. I do not. I disagree with what he says. I had him by the arm, I agree with that, I always do —

Q. And you have no recollection of having any contact with Mr. Conway?

A. No, I have no recollection.

Q. And the notes that have been shown to you and the testimony that you have heard do not refresh your memory?

A. No.

Q. If you had in fact escorted Mr. Conway to the segregation area as the notes indicate on page 54 of the 3B segregation log, would that not be something that you would remember, Mr. MacDonald?

A. No, I do not see why if there was no untoward incident. I don't see why it should, because I would say I have escorted hundreds of prisoners to segregation cells.

Q. So your answer I gather is, if there was no untoward incident you would have no recollection?

A. I would have no recollection.

THE COMMISSIONER. What is the rate at which you escort inmates in the course of a week, on an average?

A. This week it might be none, the next week I might have one every day, there is no set rate.

Q. Over the course of a year what would be the average per week?

A. In my present duties very little. At that time . . . two to three times a day.

Q. Would that be the average, as much as that?

A. No. But it could be two.

Later in his evidence MacDonald changed the number to an average of two or three a week.

MR. BYNOE. Mr. MacDonald, whether or not you remember the faces of any inmates at any time, and in particular in April of last year, were you present . . . at the bottom of the stairs that lead down from 7 and 8 corridors to the fingerprinting room and the photography room, were you ever in that vicinity when there were a number of guards having an altercation with an inmate?

A. I have no recollection of it, no.

Q. Have you any recollection of being present and seeing half a dozen guards kicking and punching inmates in that area?

A. No.

Q. Now, there is specific reference here from Mr. Conway. He says that when you took him to the segregation area, and your name is there in the segregation book, 3B log. he says specifically that you followed him into the segregation cell with Mr. Ralph and another guard he was unable to identify and started kicking. Now what do you say about that?

A. I have no recollection of it.

Q. You say you do not remember?

A. I must deny that because if I had I would certainly remember it.

MacDonald denied that the fingerprinting and photography room was used for disciplining inmates. He also indicated that in April 1974 there was photographic equipment in the room and also fingerprinting equipment, the inference being that this would not be a place in which one would want to have a physical confrontation. Nevertheless, it was a room just off the corridor leading to the elevator that gave access to the segregation areas in the new building. There were also allegations in other cases that the same room had been used for inmate assaults.

MacDonald was shown the photographs of Conway, Charette, and Southam and he was still unable to recall the incident. This seemed odd since the disciplining was the result of a fight between two inmates, and MacDonald was one of the escorting officers.

Although Dassy was inclined to exaggerate the Conway matter, his evidence in connection with the sneer by Conway was confirmed by Conway. Having seen Conway give evidence, I could understand his behaving this way and this behaviour was also admitted in Conway's evidence.

It could well be that MacDonald reacted to the sneer by striking Conway across the side of the head or face. I was not wholly satisfied that MacDonald had no memory of the event. One would think that he would have recalled the sneer and I saw no reason why Conway would admit to the sneer if it didn't take place. One was left to wonder whether MacDonald's memory was a thing of convenience and whether there were any assaults elsewhere than in the rotunda area, that is, in the photography room or in

the segregation cell. It may well be that Conway was handled roughly, possibly more so than was necessary, and, if the correctional officer responsible was accustomed to handling inmates in this fashion, then this incident would not stand out in his mind more than any other.

Insofar as Charette was concerned, MacDonald was not involved in that allegation.

EVIDENCE OF DONALD McKAY

C.O. 4 McKay was born in December 1921, was 5'8" in height and weighed 160 pounds. He was born in Scotland and was married with three children. He was first employed with the Ministry in October 1962. Among injuries he had received in the course of duty was a broken thumb. He had also had part of a finger bitten off in February 1974 – the whole of the first joint of the middle finger of the left hand.

Concerning the incident on April 30, 1974, McKay said that "according to the records, I was on duty on the 30th so this must have happened that night." He was in the Chief's office at about 7:10 when the alarm went off.

MR. BYNOE. What did you do and what did you see?

A. When that alarm goes every available officer that is on duty rushes to where the trouble is.

Q. Yes. How do you know where the trouble is?

A. The man on the front door. There is an alarm system, a flag goes up and the number of the corridor is recorded where the trouble is. I don't recall who was on the front door that night. He shouted 5 and 6.

Q. Whoever was on the front door, would that person normally respond to an alarm?

A. No, sir.

Q. Why?

A. Because he is in charge of the front door. That is one of the most security places in the jail.

Q. From that I gather there are some instructions given to guards who are in that position?

A. Unless they are relieved.

Q. Unless they are relieved, what are the instructions?

A. Stay there.

McKay said that he went to 5 and 6 landing. He saw MacDonald, who had the situation under control. There were two inmates in the corridor. One of them had a cut on his jaw. As for the number of correctional officers who were there, he was unable to recall. "When that buzzer goes, every available officer, whether on tea break or anything, goes. I don't know how many."

McKay was the senior officer on the spot at that time. He said that Mac-

Donald took Conway down the stairs and he (McKay) followed behind with the other inmate. Nothing unusual happened going down the stairs. McKay said he ordered the second inmate into surgery to get treatment for the cut and "I knew Corporal MacDonald was there with one inmate by the arm".

He then went down the stairs (that would be from Corridors 7 and 8). He took Southam into surgery and then apparently caught up to MacDonald and Conway as they were walking through the basement towards the elevator in the new building. It was indicated that this would be east of the doorway that leads into the fingerprinting and photography room. McKay continued to indicate that nothing untoward happened and the inmate was placed in one of the cells and he (McKay) made an entry in the segregation log. It is the custom for senior officers to make log entries in red and for line officers to make log entries in another colour. McKay said that the entry showed that MacDonald was with him when Conway was put into segregation. The first time he knew the name of the inmate was when he asked, in order to make the entry.

After Conway was placed in segregation, McKay returned to the old wing, to surgery, and picked up the second inmate, Southam, and brought him over to segregation. He did not recall anything unusual happening on the way and he said that Southam was not taken into the photography or fingerprinting room on the way over. He said he learned Southam's name by asking for it at the time, and an entry made at 7:35 in the segregation log indicated that Southam was placed in segregation on charge and that Ralph was present. McKay did not recall going back to the old jail after that, but he acknowledged that the 7:45 entry showing Charette placed in segregation on charge, in the presence of Casey and himself, was an entry that he had made.

He could not recall how many correctional officers had brought Charette over. He did not see anything wrong with Charette when he was placed in segregation and no complaint was made to him by Charette as to his treatment.

McKay was questioned about Conway's Misconduct Report:

Q. Now, you have some writing after "Conclusions". Would you just read what was said there, please?

A. "I interviewed inmate Bruce Conway who admits to the charge as made. His explanation was that he was very mad and had to hit someone. His manner was very arrogant. He was placed in 3B segregation."

Q. Well, now, where did the information come from . . . you say Bruce Conway admits the charge?

A. Yes, he admitted to the charge of threatening to attack another inmate.

Q. All right, and you have recorded, after that, "His explanation was that he was very mad and had to hit someone." Is that correct?

A. That is what he told me.

Q. Who told you?

A. Conway told me this, according to my report.

McKay denied punching Conway in the stomach as alleged by Conway. He also said that he did not see MacDonald and Ralph entering the segrega-

tion cell with Conway and kicking and punching him. He added that "if anything had happened I would also have put it on that charge sheet". He said he was with them "up until he [Conway] was placed in the cell . . . I don't recall what they were doing. I don't recall how many were there."

It may be that McKay was making his entry in the segregation log at the time that Conway was being put into the cell and this might account for his not having seen anything, although he said that as a senior officer he stays in the immediate area and actually sees the inmate placed in the segregation cell. "Usually I put him in, lock the door, and then I put the entry. Sometimes, if there are other men there, they will put him in and I will make the entry."

With reference to the Misconduct Report, McKay indicated that he interviewed Conway before he put him in segregation. Then, afterwards, he held an inquiry. This would mean that the inquiry was being held by the same officer who had been in some manner involved and the preferable procedure would be that someone who knew nothing about the matter should conduct the inquiry.

McKay said that he had not had the charge sheet before him when he made his preliminary interview, but that he had a report from the correctional officer, so that he knew who was being charged and what the charge was about.

On the matter of the escort, since MacDonald was a C.O. 3 at the time, "a white shirt", McKay indicated that MacDonald might have escorted Conway to segregation without McKay going along.

In answer to a question by Mr. Carter, McKay indicated that Conway was out of his sight only for "a minute at most, I think". This evidence further would contradict the allegation that Conway was taken into the photography room. It may be that Charette was taken in there, and that there was some talk between Charette and Conway which led to this allegation.

If this did occur, there was no justification for it and it should be strongly deprecated. Senior correctional officers should make sure that they control a situation where there might be some assault on an inmate prior to going into segregation. Such an assault is more likely when an inmate has been difficult or has assaulted another inmate, particularly a young inmate.

EVIDENCE OF HERBERT HOGG

C.O. 2 Hogg was born in Ireland in 1940. He was 5'7" in height and weighed about 170 pounds. He was married, with two children. At the time of giving evidence he had been employed at the Toronto Jail for almost nine years. Before that he was employed at the Ontario Hospital as a male attendant for approximately a year.

As for Conway's evidence that Hogg was in the photography room during Conway's alleged assault, Hogg said he was not there but was working in

the shower area and, "If he made that allegation that is a lie. I wasn't there, sir."

He indicated his vulnerability to being mentioned by any inmate: "I would say, sir, that 75 to 80 per cent of the prisoners in Don Jail would know me, would know my face, and a lot of them would know me by name."

In view of the evidence given by Hogg, and having observed him while he gave his evidence, and being impressed with his sincerity, I accept his evidence that he was not present as alleged by Conway.

EVIDENCE OF JAMES B. BROWN

C.O. 3 Brown indicated that on April 30 he worked the morning shift and then worked an additional five hours from 3:00 to 8:00 in the afternoon. He said he actually left at 7:45, and that that is the general practice — you are relieved 15 minutes early. If this is the general practice, then the correctional officer coming on duty should start 15 minutes prior to his scheduled commencement time.

Brown did not recall what corridor he was working, but the duty roster indicated Corridor 1. He did not recall hearing the alarm bells on the occasion of the incident or on any day about that time. At the time of the occurrence, namely April 1974, Brown was a line officer wearing a grey shirt. Subsequently he was promoted to a "white shirt".

Concerning Dassy's identification of Brown as one of the officers who assaulted Conway in the rotunda area, Brown, after seeing Conway's photograph, said, "I don't recall that inmate whatsoever." He also said that he did not recall participating in such an event as Dassy had described.

MR. BYNOE. Did it happen as far as you are concerned?

A. It didn't happen as far as I am concerned, sir.

Q. Can you advise the Commission of any reason, if there is any, why Mr. Dassy would make such an allegation against you?

A. Oh, I have no reason why he would make an allegation against me, no. He has a funny mind. I don't know what makes his mind work. . . .

Q. Well, before the 30th of September of last year, was there any animosity or hard feeling between you and Mr. Dassy to your knowledge?

A. Yes, there was.

Q. Right. Could you advise the Commission as to the basis for that statement then?

A. In September, last year, I would be acting corporal . . . and at one occasion I was in charge of the shift, 3 to 11 shift. I don't recall which day. And that particular day, purchase orders were to be given out, and, if I could recollect. Mr. Dassy was working up in 11 and 12 and he hadn't given out the purchase orders as per the standard format. . . . He came out of the Chief's office with this sheet plus the purchase orders which had not been given out and he says

I have no time to do them; so I informed Mr. Dassy he had better make time to do them before the end of the shift. This was roughly 9:30 at night and at that time the inmates were locked up. To this, Mr. Dassy stamped out of the office muttering. I don't know what he was muttering, but he was not pleased at all. . . .

Q. Mr. Dassy I think advised me that is the day he left the jail and never did them. Do you have any knowledge of that?

A. That is entirely wrong because that same night, the one and only time I was in this gentleman's presence for refreshment, he sat at the end of the table and glowered at me, so there was no way he left the jail that particular night.

Brown referred to this as having occurred at a Legion hall. There was evidence at the inquiry that at times after work the correctional officers would go to the Legion hall to have some beer. I find nothing wrong in the use of the Legion as a club room by the correctional officers, particularly since they did not have adequate accommodation at the Toronto Jail for meeting and relaxing.

Q. Was there any other reason that you could ascribe to any ill feeling or ill will between Mr. Dassy and yourself?

A. No, sir, that is the only dealing I had with Mr. Dassy.

Q. Did you go out with him socially?

A. No, sir.

Q. Socially, that particular evening was a result of an invitation?

A. No.

Q. How did it happen?

A. He just joined the company.

Q. Could you advise us of how many persons approximately were in your presence at that time?

A. Six or seven.

Q. Were they members of the custodial staff?

A. They certainly were, sir, yes.

Brown was referred to a conflict between his evidence and that of a former correctional officer, Bruce McClay.

THE COMMISSIONER. Mr. McClay claimed that you had assaulted someone and you denied it.

A. That is correct, sir.

I have a little more difficulty in understanding the conflict of evidence between McClay and Brown than that between Dassy and Brown. There was evidence at the inquiry that Dassy did not like Brown or was jealous of him; at any rate, there was some resentment. As far as McClay was concerned, I am satisfied that he was not motivated improperly against Brown, and, if McClay was wrong and Brown was correct about the other incident, then I think McClay's error was an honest one caused by a lapse of memory.

Brown struck me as a person of some strength. He spoke rapidly and I imagine he would react quickly to any situation. He did not seem to be an officer who would stand for much nonsense from an inmate. Although he had a pleasing personality he also seemed to be a very definite and positive person. I think he would be a good man to have about in time of trouble and also that he has leadership qualities. I find that there was certainly nothing wrong in having him promoted to the rank of C.O. 4, despite Dassy's criticism of the promotion at another point in the inquiry.

Brown was asked about Dassy's allegation that he was also involved in the Charette matter. Once again there was a similar denial. Brown stated, "I don't recall it happening at all, sir . . . I was not even there. . . . As far as I am concerned, sir, it did not happen, no."

THE COMMISSIONER. Why do you say you were not there at all if you don't recall?

A. I can't remember it happening, sir.

Q. Well —

A. Okay, I can't say it did not happen but I can't recall anything as such happening. Let me put it that way, sir.

Q. Do you know if you were in the vicinity, if you were with a group that were escorting Mr. Charette?

A. Well, since the recess I looked at the records for that afternoon and at that time I found I was on 1 and 2 corridor myself so I could not have left the area. I was working by myself in charge of 2 corridor so there is no way I could have answered the alarm.

Q. When you say you were working 1 and 2 corridors yourself, do you mean you were the sole correctional officer looking after those two corridors?

A. That is correct, sir.

Q. Even if that were the case, might there be some relief given to you at some time while you were the sole correctional officer in those two corridors?

A. I think at this time I was in charge of both corridors. I was relieving my partner for lunch. When one person goes for lunch, the other fellow takes over both corridors.

MR. BYNOE. The time that we are concerned with is approximately 7:00 o'clock in the evening to 7:15 or so?

A. That is correct, sir, yes.

Q. Would you, according to your recollection and the documents that you have seen, would you be relieving someone at that time, at 7:00 o'clock or so in the evening?

A. It is possible, sir, yes.

Q. For supper?

A. Yes, for supper. . . .

Q. Would there normally have been two guards, one on number 1 corridor and one on number 2?

A. A full complement of staff, yes.

Brown also denied Dassy's allegation that while in the rotunda he

(Brown) kicked Charette. He also said it was not true that he punched and kicked Charette at the bottom of the stairs leading from the 7 and 8 landing to the basement, as alleged by Dassy.

Neither Conway nor Charette had named Brown as being responsible for the assault which they claim they sustained.

It was brought to Brown's attention that Southam had stated that Brown had punched him in the stomach in the photography room and that while he was on the ground Brown, among other correctional officers, had kicked him.

MR. BYNOE. What do you say to that allegation?

A. Using that same context, I am 100 per cent sure that I didn't do it.

Q. Were you present and observed or heard anyone else do anything like that?

A. No, sir.

Q. He says when he was on the ground he was kicked three or four times and that you asked him about the fight.

A. No, sir.

Brown was then questioned about any other assault he might have been involved in and his answers were very candid. He said he had been working at the jail for four years and that he had had occasion to strike an inmate an average of two or three times a year.

The following week, after giving evidence on the above, Brown presented to the Commission a list of occasions on which he acknowledged using force, together with details of the same. The list (filed as Exhibit 220) gave some indication of the problems confronted by correctional officers and the ways in which they coped with them.

Mr. Carter, in his examination of Brown, brought out from the logs of Corridors 1 and 2 the fact that Brown was the only officer on duty from 6:35 to 7:45 p.m. Taking into account 1 hospital dormitory, there would really be three areas that Brown was responsible for and he agreed with Mr. Carter that under those circumstances he would not leave his post.

From the weight of evidence, it appeared that Brown was not involved in any of the episodes on April 30.

EVIDENCE OF KINGSLEY LYN

C.O. 2 Lyn was born in Jamaica in 1932. He was 5'8" in height and weighed 185 pounds. He was married and had four children. He joined the Ministry of Correctional Services in November 1973.

Lyn was in hospital and could not attend. He was not very actively involved in the Conway-Charette incident, and it was agreed by all counsel that a statement obtained from him on November 29, 1975, could be read into the record. Mr. Bynoe advised that Lyn's evidence was as follows:

Mr. [C.O. 2 David] Cordner, the guard in charge of No. 6 Corridor, and myself, who was in charge of No. 5 Corridor, were a bit surprised to see Conway and Charette return before the end of the session. Immediately after being admitted to No. 6 Corridor, after returning from the chapel, a fight broke out between Conway and another inmate, Southam.

I rushed over to No. 6 Corridor to see if I could be of assistance to Mr. Cordner. We both called to the inmates who were fighting to desist but the fight continued. Cordner went and pressed the alarm buzzer, which brought a response from several officers who were available. I do not remember who they were.

On arrival of the officers the fight between Southam and Conway stopped. I opened the door and told both Conway and Southam to come out on the landing. They both came out voluntarily and were escorted by other officers who had responded to the call downstairs. No force was necessary to be used and none was used. . . . I have not seen Conway since.

With respect to the inmate, Charette, he said:

There had been a fight in No. 6 Corridor and the officer in charge of that area, Mr. Cordner, had gone down to the office to make out a report. I was supervising No. 6 and No. 5 Corridor. I was called to the phone, which is located between 5 and 6 Corridors, but closer to 5. When I answered the phone Miss Eldridge, the social worker, enquired whether Conway or Charette were the inmates involved in the disturbance in No. 6 Corridor.

Before I could reply to her question I heard a loud commotion in No. 6 Corridor. I dropped the phone and pressed the alarm buzzer and ran to 6 Corridor. I saw an inmate, Andrew Geddes, running towards the corridor. His nose and mouth were bleeding. I opened the door of the corridor and let him out on the landing. By this time some other officers who had been attracted by the alarm arrived. I asked Geddes who was responsible for the attack and Geddes replied he was sitting at a table reading a newspaper and he didn't see who it was who hit him.

Geddes was taken away for medical treatment. I tried unsuccessfully to have him divulge the name of his attacker, but he would not respond in any way. That is all I saw in regard to this incident.

EVIDENCE OF DAVID HERBERT CORDNER

C.O. 2 Cordner was born in Northern Ireland. He was 37 years of age, height 5'9", weight 180 pounds, and he had been on the staff of the jail for approximately eight years. Before that, he had spent six years as a police constable with the Royal Ulster Constabulary.

On April 30, Cordner was working on Corridor 6 on the 3:00 to 11:00

shift and he said that at 6:40 four inmates went to the chapel and these included Conway and Charette. He made a notation in the log that at 7:15 Charette returned and at 7:18 Conway returned. The total number of inmates in Corridor 6 was 19.

MR. BYNOE. What if anything happened after those two men returned to your corridor that was unusual?

A. Well, Conway came back, I was putting those boys in and there was a ruckus behind me because I had got to turn my back to sign in the log book.

Q. To sign in the log book and where was the log book located with respect to the corridor?

A. It was at the top of the corridor on the wall.

The log book was kept on the landing outside the grilles.

Q. What did you see and what did you hear?

A. I just heard a scuffle and banging around. I did not know who was fighting at the time. I got Mr. Lyn to press the alarm button, and he came over and covered me.

Q. Who was Mr. Lyn?

A. Mr. Lyn was the guard on 5 corridor . . .

Q. The alarm rang and what happened then?

A. Mr. Lyn covered me and I went into the corridor.

Q. What do you mean by covered you?

A. Well, he took my keys.

Q. What keys?

A. The keys to 6 corridor. And he closed the door after me and I went in to break up the fight.

Q. Who was in there with you if anybody, from the custodial staff?

A. Nobody from the staff, sir.

Q. You walked in alone?

A. Yes, sir.

Q. What did you do and what did you see?

A. I saw Conway and Southam fighting.

Q. What did you see them do that caused you to say they were fighting?

A. They were punching and kicking each other, sir.

Q. What, if any, degree of force would you say was being used?

A. The fullest of their both abilities, I would say.

Q. Did you see blows land on Mr. Southam?

A. I seen him getting kicks, yes.

Q. Can you recall who kicked him to start off with?

A. Conway kicked him.

Q. And did you see Mr. Conway, whether or not he was wearing boots or shoes?

A. He was wearing boots, sir, because he had just come in from chapel.

Q. Now did you see any punches land on Mr. Southam?

A. I cannot remember, but I remember him getting the boot, that's all.

Q. What about Mr. Conway? Did you see any blows land on Mr. Conway?

A. Not really, no. He seemed to be doing all the fighting, when I got there anyway.

Q. Mr. Southam indicated that he was not punching but he was kicking, would you agree with that?

A. Yes, sir.

Q. Did you see any kicks land on Mr. Conway?

A. No, I did not. No, he was missing most of the time.

Q. What did you say or what did you do?

A. I just told them to break it up, sir.

Q. What effect, if any, did that have on them?

A. They broke it up.

Q. Voluntarily?

A. Yes, sir.

Q. And what did you do, what did you see?

A. I came around from the back of them. I told them to leave the corridor and by that time there were other guards that came. . . .

Q. So those two inmates, Southam and Conway, were in front of you, and they were complying with your order to leave, go out of the corridor?

A. That is correct.

Q. Was any force applied to their person as far as you could see?

A. No, sir, they just walked out voluntarily.

Q. Now, would you then just continue on from there with your narrative as to what you saw and what you did at that time?

A. I had come out of number 6 corridor and Sergeant McKay met us upstairs; we walked down the stairs.

Q. Sergeant McKay, yes. And is he here today?

A. Yes, he is . . . and there were about five guards altogether. We walked down the stairs and when we got to the dome I left and went to the Chief's office and got the punishment forms, and went to the tea room and read out the charges.

Q. Well now, you went to the Chief's office and you say you got the punishment forms. Would they be the Misconduct Reports?

A. That is right.

Q. Now then, when you got to the Chief's office on the way down, did you have any contact whatsoever with Mr. Conway?

A. No, sir.

Q. Did you have any contact whatsoever with Mr. Southam?

A. No.

Insofar as the incident involving Charette is concerned, Cordner says that he was still in the tea room making out his report on Conway.

Other correctional officers were called, but I do not think any useful purpose can be served by reviewing their evidence. None of them confirmed any assault nor did they seem to have any significant contact with the inmates involved in the April 30 incident. At any rate they did not recall anything unusual happening or anything unusual about the appearance of any of the inmates.

This, again, pointed up the difficulty of not having any independent witnesses.

EVIDENCE OF ALEXANDER FARQUHAR

The Deputy Superintendent said Conway made no complaint to him that he had been assaulted by correctional officers, nor did he complain of any injury.

Mr. Farquhar said that he gave Conway a more severe penalty than Southam because he considered that Conway was "the aggressor in that situation". The penalty was loss of statutory time, the most serious penalty that can be handed out on an internal discipline matter.

Mr. Farquhar said he saw Charette in segregation on May 1, which was the day after he had been placed there. He did not have a hearing on Charette's Misconduct Report because he understood that Charette had been placed in segregation pending an investigation by the officer in charge on the previous afternoon.

MR. BYNOE. Do you have any recollection of what transpired at that point?

A. At that time it was my understanding that there was insufficient evidence to charge Charette with fighting in the corridor, and because there was insufficient evidence no charge was laid.

Q. Were you to understand that what the inquiry was, was whether or not there was a person that ran along the top of the table and kicked Mr. Geddes in the face?

A. Right.

Q. Does that correspond with your recollection of what was being investigated?

A. It does. The officers were of the opinion that it was indeed Charette who had done it but no evidence could support it so no charge was made.

Q. Was he then released from segregation?

A. I released him from segregation and referred him to the doctor and that is how he would appear in front of the doctor.

On the matter of Charette being referred to a doctor, the evidence of Farquhar was as follows:

THE COMMISSIONER. . . . Do you recall why you referred [Mr. Charette] to the doctor?

A. I don't recall exactly what was said by Mr. Charette at the time but he could have told me that he was fighting or that he had sustained injuries. They were not evident to me. I referred him to surgery at that time.

Q. Then did you follow that up with the doctor?

A. I had checked Charette's medical and found on his return from the hospital that his injuries were not of any remarkable extent.

Q. I am more concerned, Mr. Farquhar, with reference to Charette's complaint. According to the doctor's notation on May 1st, it says, "Sustained injury to left posterior hemithorax, that is the region back of the rib cage, last night. Claims that he was beaten up by correctional officers."

A. I don't recall that he made a specific complaint. I seem to recollect that he did mention the fact that he had been roughed up and then I referred him to surgery to find out. Any injury that he might have had certainly was not evident

to me and he did not specifically say "I was injured" in any area.

Q. That may be so, but what I was really inquiring about was the follow-up with the doctor on the doctor's report. As I understood from your evidence, when you do refer inmates to the doctor you follow it up?

A. I follow up by checking the medical documents . . . to find out if there were any serious injuries or any injuries that could be put to any brutality or a beating. In the case of Charette, I did not find that so.

Q. Then you were not aware, I take it, of the notation that the doctor made that he claims he was beaten up?

A. I was aware, yes, that he had claimed that.

Q. That he had told the doctor that?

A. Only from reading the medical report. I did not receive a report from the doctor.

Q. Then what steps if any were taken or were initiated?

A. That would be with the knowledge of the Superintendent as well, sir, and it would be his prerogative as to what action he was to take . . .

Q. Yes, did you draw this to the attention of the Superintendent?

A. I believe I did, sir. It would appear to me that I would, sir.

Q. Then you don't know what the Superintendent did with regard to it?

A. No.

It is with some regret that I must make a finding that this matter was not pursued sufficiently. The result of the medical examination indicated that some injury was sustained and it was alleged that this was caused by being "beaten up by correctional officers". Therefore, further inquiries should have been made in this matter and a hearing held by either the Superintendent or the Deputy Superintendent.

Mr. Farquhar said that he believed the matter was drawn to the attention of the Superintendent by himself, explaining: "Why I say that is that it is almost rote that if a person does complain of a beating that we bring it to the attention of the Superintendent, because certainly senior staff are aware that the Superintendent is not the only person that he can speak to. He can speak to his lawyer. . . . We want to be in the position where we can reply to him."

THE COMMISSIONER. I imagine it would be important to investigate any of these complaints as quickly as possible?

A. Indeed.

Q. Is there any record kept where you do draw these matters to the attention of the Superintendent?

A. It would more than likely be verbal, sir.

Q. Yes.

A. We have a meeting in the Chief's office each morning and anything that has occurred the night before is discussed at that time, on reports from senior staff.

Q. Mr. Farquhar, with all the forms that are required to be filled out, do you think it might be advisable . . . to have some written notation of an important allegation such as this of the beating by correctional officers?

A. I agree, sir.

Q. That would not entail a great inconvenience?

A. No.

Q. Then you would have a permanent record of the complaint and the passing of it on to the Superintendent and also the action that was taken by the Superintendent.

A. I was thinking this morning when you were speaking, Mr. Commissioner, that we do have a form now in use that could well be used for that purpose and that is the accident and injury form with the comments of the Superintendent on the form, and this is kept on file.

Q. That form you have had for some time?

A. That is true.

Q. You see, our purpose here is not to criticize necessarily, but to try and improve the system and oftentimes people who are very close to the picture don't see certain things the same way as someone who is just coming into it fresh.

A. That is true.

Q. I think you appreciate that?

A. Can't see the forest for the trees.

From the above, it is certainly obvious that there should be records kept and forms made out of allegations of assault by correctional officers on inmates and copies of these should go to the proposed Toronto Jail Council as well as to the district office of the Ministry.

I say it is with some regret that I make the earlier mentioned finding, for with the exception of one other incident when Mr. Farquhar was Acting Superintendent and a different inmate (Patrick Jerome Pirozzi) was kept in segregation an exceedingly long time, I found Mr. Farquhar a capable, experienced, and understanding administrator. He would certainly be well qualified to perform the duties of a Superintendent at some other institution. I mention some other institution, for I believe that it is most unfair to have a man who has been employed at the Toronto Jail for a considerable length of time in a senior capacity, and therefore traumatized by it, remain there in any senior post for too long a period of time. Having visited other institutions, particularly the more modern ones, I consider the Toronto Jail post of Superintendent, or Deputy, or Assistant Deputy, one of the most difficult posts in the Ministry. It is therefore unfair to such person as well as to his senior officers that he remain as a Superintendent, Deputy Superintendent, or Assistant Superintendent at the Toronto Jail for any extended period of time.

EVIDENCE OF DR. PETER DUBELSTEN

Dr. Dubelsten was asked as to the reason for denial of medication on May 6, 1974, to Daniel Charette.

MR. BYNOE. Now then, you say he requested nerve and sleeping medication. You denied it.

A. I denied it.

Q. Is there any reason why you denied it?

A. At that time I guess I did not think it was necessary to prescribe and taking into consideration his age I thought it would be better not to start.

I do not find any criticism of Dr. Dubelsten for his decision. Later in the day Dr. Dickinson did prescribe medication, but doctors differ for different reasons and this would apply not only to the Toronto Jail but to medical treatment in hospitals and elsewhere.

A more important matter is the procedure when a complaint is made to a doctor of a beating, and Dr. Dubelsten was questioned on this.

THE COMMISSIONER. Doctor, in view of his complaint of beating, did you speak to any of the jail staff about this matter?

A. No, I did not, sir.

Q. Is there any routine that you follow in connection with such matters such as conferring with the Superintendent or making out a report to the Superintendent on such an allegation?

A. No, we don't have any policy.

MR. BYNOE. Doctor . . . did you have any knowledge or belief that when you saw the inmate, Charette, that the matter had not been reported to anyone?

A. No.

Q. Did you not think it would be your duty to inquire whether or not, bearing in mind the serious allegation, that some steps were being taken to investigate it?

A. No.

George C. Conn, counsel for Charette, in making representations to the Commission about the medical history of Charette, stated: "There are I would say 100 entries on this report which I assume means he has been to the doctor 100 times. We are dealing with an inmate, a former inmate of the prison, whose only recreation is to go to the doctor."

SUMMARY (APRIL 30, 1974, INCIDENTS)

There can be no doubt that the correctional officers were justified in charging Conway with attacking another inmate (Southam). The penalty imposed by Mr. Farquhar was appropriate.

The Commission's inquiry into the events of April 30, 1974, was conducted in depth. With this advantage, one might wonder whether the disposition against Southam and Charette should not have been different. In Southam's case, he was the victim of an aggressive and initiated act of another inmate (Conway). In law, he was justified in defending himself to

the extent that he did. He seems to have been punished for doing so, and for not showing remorse at having defended himself. Had I been trying his case, I would have dismissed the charge against him.

As for Charette, the inferences that might properly be drawn from the fuller evidence that came before the Commission were that it was he who was responsible for the vicious and unprovoked attack on inmate Geddes. I consider that he should have been penalized at least to the extent of Conway.

I can well sympathize with the correctional officers' strong feelings. In their eyes and without sufficient inquiry, Southam may have appeared to be guilty of fighting. It is the duty of the correctional staff to intercede and stop inmate fighting, particularly where it might involve injury to an inmate. For one of the corollaries of custody is to ensure the physical safety of those kept in custody. This is so whether the outside attackers be other inmates, correctional officers, or some third agency such as, for example, fire. It also applies to taking steps to protect an inmate from self-harm. No matter how serious an officer considers this duty, it does not justify him in using unnecessary force on a wrong-doing inmate. I therefore now come to the allegations of excessive force made by Conway, Southam, and Charette, and my findings.

I consider Dassy's allegation that C.O. 3 MacDonald "dropped" Conway with a punch to the side of the face to be an exaggeration. I do think, however, that MacDonald "cuffed" Conway with an open hand, and although I find that there was provocation I also find that the striking was not in self-defence. Therefore it was unjustified.

I believe that Conway was not treated too gently on the remainder of the journey up to and into his segregation cell. I do not think he co-operated fully during this time, nor did he proceed without reluctance and trouble. Added to this was the resentment about his fighting with another inmate.

I do not find sufficient evidence to make any other specific findings with reference to his being escorted. Indeed, the evidence indicated that, as for correctional officers Corder, Hogg, Carpenter, and Brown, they were either not present at all, or not at many of the alleged times. I also accept the evidence as to time and place of C.O. 4 McKay and therefore reject the allegation that Conway was taken into the photography and fingerprinting room and beaten up there. I must find that, despite his denial of presence, Ralph was one of the escorting officers.

There is no doubt that Conway and Southam both sustained some injury on April 30. This is as consistent with having resulted from their fight as at the hands of correctional staff. I accept inmate Geddes's evidence that their fight was serious, with ensuing punching and kicking.

Southam, similarly to Conway, misidentified correctional officers who it was shown were not present as alleged. Southam also may have been escorted a little roughly for the same reason as Conway.

As for Charette, he too was apparently being pushed along to segregation. The correctional officers escorting him were required to use some force. Probably they did not measure with exactitude what would be sufficient and no more. Dassy by his own admission "joined in", and his confessed ac-

tions were inexcusable. His use of force was excessive and unjustified under the circumstances. I find that, despite the impression to the contrary which he wished to give in his evidence, Casey took an active and enthusiastic part in escorting Charette to segregation.

Other relevant comments have been made with reference to the incidents, and the allegations flowing therefrom, during the review of the evidence of the several reported-on witnesses.

2. Charette's Second Allegation

EVIDENCE OF DANIEL CHARETTE

When Charette was giving evidence on February 3, 1975, Mr. Bynoe referred to another allegation by him. Charette had been transferred in August 1973 from Guelph to Millbrook. He said, "I kept on asking for a transfer up to Monteith or Burwash and they would not give it to me. So I told them to ship me to Millbrook, I did not care."

MR. BYNOE. Were you aware that Millbrook was a maximum security institute?

A. I did not care at the time. I just wanted out.

Q. You just wanted out of Guelph?

A. Yes.

Q. Were you really classified there as an institutional problem or disquieting problem in the institution?

A. Probably.

Q. Or discipline problem?

A. Probably.

Q. I think that is the way Mr. Conway described his classification and you are in about the same class as Mr. Conway?

A. No, not in the same class as him, far from him.

THE COMMISSIONER. In what way?

A. Inmate-wise.

Q. Are you less difficult, is that what you mean?

A. I would not say that.

Q. I don't quite understand when you say you were in a different classification or category than Mr. Conway.

A. I don't think I am the same as his because he never went to Millbrook from Guelph.

Q. What significance is there in that, that you went from Guelph to Millbrook?

A. He was a kid and I wasn't.

Q. You are about the same age.

A. It don't matter, the same age, not in jail. It is how you get along.

Q. Did you get along better with the correctional officers than Mr. Conway,

in your opinion?

A. I never got along with any correctional officer. I just go there to do my time.

Elsewhere in his evidence, Charette acknowledged: "I used to like to get the guards riled up."

MR. BYNOE. Did you know that you were going to Millbrook?

A. I knew as soon as they put the handcuffs on me.

Q. Did you know that you would not be going directly to Millbrook?

A. No, I did not know that. I figured we were going straight there.

Q. So you then went into the Toronto Jail?

A. Yes.

Q. Would you tell the Commission what happened to you when you went into the Toronto Jail?

A. I asked for a glass of water ———

Q. Wait just a moment. Were you searched?

A. Yes, changed clothes.

Q. Passed through, changed clothes, was there anything untoward that happened to you during the search and while you changed your clothes?

A. No.

Q. Were you assigned to a corridor?

A. Yes.

Q. Where did you go?

A. 11 and 12.

Q. Now I understand that at some time you were in a bullpen, is that right?

A. Yes.

Q. How did it happen that you were in the bullpen if you were assigned to 11 and 12?

A. That is where they assign me there. You got to wait there until they are ready to pick you all up.

Q. So I gather then from what you say that you went through, you were searched and processed, you were assigned to 11 corridor and taken up to the bullpen waiting to be taken to your corridor, is that right?

A. Yes.

Q. Now, where is this bullpen?

A. Same place as I was talking about before.

Q. The reception room area outside Corridor 8, is that correct?

A. Yes.

Q. Now, were you in there alone or with other persons?

A. Other people.

Q. What happened when you were there?

A. The guards were outside and I asked an inmate who was walking by to get me a glass of water.

Q. You asked the inmate or the guard?

A. The inmate went and got it and when he came back he did not bring me my glass of water. He walked by some guards, he wanted to talk to some guards, so I told him to bring my water over here.

Q. What did you say to him?

A. Pardon?

Q. Do you recall what you said, what words you used?

A. I swore or something, I was kind of hot.

Q. Yes, and that was at the inmate?

A. The guard said, are you talking to me, and I told him to go [deletion].

Q. All right. So at that stage you were angry with the inmate for not bringing you the water and talking with the guard and you swore at the inmate. Then the guard came over and asked if you were talking to him and then you swore at the guard, is that right?

A. Yes.

Q. What happened then?

A. He pulled me out and brought me upstairs.

Q. What do you mean pulled?

A. When they pull you out, that means they take you out.

Q. They open the door and you walk out. You walked out on your own?

A. Yes.

Q. How many guards were there?

A. Four or five, I cannot be exactly sure of the number – four anyways.

Q. And you have looked at the photograph book of all the guards. Have you been able to pick out photographs of any guard that had anything to do with this incident?

A. No, too long ago.

Charette said he was then removed to the basement of the old building and somewhere in the area of the showers “they made a circle around me and they were poking and kicking me”.

Q. They made a circle around you and were poking and kicking you. What, if anything, were they poking with?

A. Keys.

Q. How many of them had keys?

A. I presume every one of them had.

Q. In what fashion were they poking you?

A. Shotwise, towards the waist and the back.

Q. By shotwise what do you mean?

A. Punching.

Q. So the keys were held in what fashion?

A. I cannot say, probably the big end because if it had been the other end I would have been cut all over.

Q. Now these keys, are you able to describe them? At one stage you indicated that they were using knuckle dusters?

A. Same thing.

Charette claimed that the keys were held within the fist and no metal would be protruding.

Q. Now then you indicated they were jabbing you?

A. Yes.

Q. What do you mean by jabbing?

A. Not really hard shots.

Q. Hard shots, Mr. Charette?

A. Punches.

Q. Not really hard punches but more or less jabs?

A. Yes.

Q. And you indicated earlier you were kicked. Is that correct?

A. I cannot recall exactly how hard or where.

Q. Is it your evidence that all of these four or five persons were there participating?

A. Yes. . . .

Q. They did not leave any marks and did not hit you in the face, is that right?

A. Bruised up a little bit.

Q. Where were you bruised?

A. Back and front.

Q. Nothing on the face?

A. No.

It was indicated that Charette had given a statement to the Commission investigators and that there was some inconsistency between the statement and his evidence at the inquiry, to which he replied, "At the time I probably recalled better than I recall now."

The date of the statement to the investigators was October 3, 1974, four months before he gave evidence at the inquiry. On that occasion he had alleged that his nose was broken, swollen, and bled and, "it caused two shiners, two black eyes".

Q. Why today, Mr. Charette, did you tell us that they did not try to strike you in the face?

A. That is how I got a broken nose today.

Q. Why did you tell us today they did not strike you in the face because they did not leave any marks, or would not leave any marks?

A. Yes, because I was not thinking about the incident seriously today.

Q. You realize, Mr. Charette, that the Commissioner on hearing your evidence only hears what you say today, and he must make his findings on what you tell him. Do you understand that?

A. Yes.

THE COMMISSIONER. Did you make complaints at that time to anybody?

A. No. They just held me back up. I was more or less through that whole bit.

Charette was asked why he did not complain to the doctor at the Toronto Jail on his alleged beating to which he replied, "Like I said, before I had a chip on my shoulder, about the only thing I would have asked for was some pills."

The medical records at the Toronto Jail indicated that on August 28, 1973, Charette asked for "something for forehead, also nerves . . . mild acne forehead". He was unable to recall if he had complained about his nose at that time. A further note on the next day indicated "infected rash acne forehead" and on September 4 the admission examination at Millbrook

indicated "general health ok . . . wants Valium . . . fit full duty".

In view of these medical records containing no notation of injury to the nose, and the earlier evidence at the hearing that there were no bruises on the face, and also the fact that there was no evidence of a complaint being made to anyone in authority and finally the lack of identification of the correctional officers who, it is alleged, beat Charette, there was insufficient evidence to warrant any further inquiry into this allegation or the calling of further evidence. Therefore no finding can be made to support the information furnished to the Commission investigators and not recounted when Charette initially was giving his evidence.

Mr. Bynoe was most fair in bringing this matter to the attention of Charette when he did not mention it himself, to give him an opportunity to give evidence on the matter, if he so desired.

Charette was not such a credible witness that his evidence, standing alone and unsupported by any documentary or *viva voce* evidence, could justify a finding of a fracture to his nose as a result of the alleged assault. Certainly, if he was "jabbed" it was not of any consequence. This, however, would not justify such action on the part of correctional officers, if it did occur, even if there was no serious injury.

EVIDENCE OF DR. JOHN ANGUS MacLENNAN

Dr. MacLennan is a 1962 graduate of the Dalhousie University medical faculty. He later became licensed to practise medicine in Ontario. He joined the medical staff of the Toronto Jail in November 1972, and has now returned to private practice.

Dr. MacLennan saw Charette on August 22 and 28. He was questioned as to Charette's allegations of assault in August 1973.

MR. BYNOE. He advised that he was in transit from Guelph to Millbrook and that he was stopping at the Toronto Jail, and that he was in the shower and search area when four or five guards made a circle around him, poking him with keys in their hands that they were using as knuckle dusters, and kicking him . . . He says, "I think my nose was broken as it swelled up and bled and it caused two shiners, two black eyes, and that is how I got a broken nose today." He says that he was examined by you afterwards and that he didn't complain to you. He doesn't believe he complained to you. Then in another instance he indicates that he was all bruised up and he thought he complained to you. . . . When you examined him, bearing in mind, accepting what this witness says, and assuming that that happened, would you have expected to see something on his face that you would have noted?

A. If he would have had a bleeding nose, that would have been on record. And if he had a swollen nose, that would have been on record. . . .

Q. So there was not any injury that you observed?

A. That is right. . . . They are usually seen within an hour after they have gone through that shower area.

THE COMMISSIONER. Yes. How long does it take for eyes to appear blackened?

A. Well, they won't appear black the first day; but they will be pretty red and swollen. Especially if he claims that there is a fracture to his nose, he has got to have some thickening in the bridge of his nose.

Q. How long does that take?

A. That is immediate, but the black eye may take a day or two to start showing.

Q. Now doctor, assume . . . that the inmate had suffered the actions that he has described about being given a shot in the face with a fist and the nose broken and swelling up and causing two black eyes, two shiners, would you have expected some six days later on August 28th to have observed that?

A. Yes.

Q. Is there any probability that you would have seen this man on August 28th and made a notation about acne on the forehead . . . and not recorded the observation that the man had two black eyes?

A. No.

Q. If it takes a day or two for the discolouration to take effect around the eyes, how long does it take before such discolouration goes away, within reason?

A. Without any treatment at all it is going to stay there for 10 to 14 days.

Q. If the nose was broken and if a person had two black eyes as a result of being punched on the 22nd August, would you have expected that to show clearly some six days later on August 28th?

A. Yes.

Q. Had it been visible, and you having made your observations with respect to acne on the forehead, would you also have expected to observe it and to record it?

A. Yes.

Mr. Carter questioned the doctor as to the allegations of Charette that he was punched and poked, with jail keys being used. This was not an isolated complaint but had been mentioned on other occasions. It may therefore be a complaint that is made by inmates from hearsay evidence in connection with other events, possibly in other institutions. At any rate, according to Dr. MacLennan, it was not borne out by his medical examination.

3. The Geddes Allegation

EVIDENCE OF ANDREW GEDDES

Geddes was asked about his personal experiences at the Toronto Jail, while giving evidence in connection with the Charette allegation.

THE COMMISSIONER. Mr. Geddes, have you ever had any difficulty yourself

with correctional officers?

A. Yes, I have.

Q. Would you tell us about it?

A. Well, when I first went into the jail I was beaten, down in the shower room.

Q. How did that come about?

A. Just brought the guards' meals down and somebody had taken a seizure and they told me to go sit somewhere else. Instead I ate a guard's meal and they came back and they were angry and they were kicking and punching me. . . .

Q. It was as you were going through the admitting procedure and the showering procedure and that?

A. Yes.

Q. Did you know that meal was meant for one of the correctional officers?

A. Yes, I did.

Q. And you thought you would take a chance on it anyway.

A. I was hungry, I just ate it.

Although Geddes had been interviewed by the Commission investigators in connection with the Charette episode, he had not mentioned anything about his own experience during that interview.

Geddes was another example of an inmate appearing before the Commission as a witness to an incident and then, during the course of his evidence, relating some incident in which he was personally involved, and alleging an assault.

The records indicated Geddes entering the Toronto Jail on April 27, 1974. He was charged with theft under \$200 and was detained in custody awaiting appeal. He said that at the time of his admission he was under the influence of barbiturates and marijuana.

He stated that he had removed his clothes in the search area and a correctional officer was "checking in my stuff and a man took a seizure around the corner".

A. And they all ran around the corner to see what was going on and they told me to go and stand over on the other side of the wall away from the crowd and I did not. I went back and started eating a meal and this was when they came back and one guard screamed out that somebody was eating his meal or somebody was eating somebody else's meal and they all came back and started punching me.

MR. BYNOE. How many came?

A. Four or five.

Q. Four or five guards, and what did they do?

A. They punched me and stepped on my toes; they kneed me, choked me. I had longer hair, they pulled my hair.

Q. Did you at any time retaliate in any fashion?

A. No I did not. I was busy. I was trying to block the blows.

Q. What happened after that?

A. They told me to go up and shower. That was it.

Geddes identified two of the five correctional officers as C.O. 2 Murray Todd and C.O. 2 Clem Harrison. He said that they were in the group, but he

could not say "who did what exactly" although he did add that Harrison "choked me for a while". He described the force as "not very much . . . they yanked on my hair, they pushed me, they stepped on my toes, jabbing me."

Q. After that, did you get dressed?

A. Yes.

Q. What did you do then?

A. They have got a waiting section when you first come into the jail.

Q. What did you do there?

A. You just wait, wait for four or five hours until they move you to a corridor.

This would be a reference to the "court cells", Corridors 7 and 8.

Geddes did not complain to the doctor or anyone else about the assault. His reason for not complaining to the doctor was that "there were no injuries".

Geddes described the affair as being "a little more" than just a pushing around. He said that some of the skin on his foot "came out from their stepping on my toes". His feet were bare at the time. But there were no other marks.

Geddes indicated that he had been asked by Harrison on two or three occasions whether he had mentioned anything about the incident to the Commission investigators.

THE COMMISSIONER. Do you remember his words that he put to you?

A. He just told me that I had a pretty fair time in the jail, and I really was not bothered like some other people, and that was it. He did not think I would say anything because I was such a nice guy.

On the matter of credibility, I think it unlikely that Geddes dreamed up this additional fillip.

I accept the fact that some physical disciplinary action was taken against Geddes rather than having put him on charge, and that it was of no more serious consequence than related by Geddes. Geddes did not require any medical attention as a result of the episode nor did he make any complaint to a doctor.

It may well be, with the investigation pending and the publicity that incidents were getting in the press, that a correctional officer offhandedly spoke to Geddes to allay his concern that Geddes might report the matter. Geddes did not go so far as to indicate that any threats were made. He stated that the only one who mentioned it to him was Harrison.

When Geddes first related the incident to the Commission investigators, which was after he initially started to give his evidence, he also referred to Harrison's subsequent conversation with him.

In view of the power of the jail grapevine, it could be that Harrison found out that Geddes had been interviewed by Commission investigators. Not knowing what areas were dealt with in the interview, he may have been concerned about it.

A number of correctional officers who normally work in the admitting and search area were called as witnesses.

C.O. 3 James Couper gave evidence that he was the admitting officer on duty at the time. He had no recollection of the seizure or of any incident concerning inmates. He indicated that correctional officers did not eat in the search area.

C.O. 3 Arthur Chaplin was in charge of the shower booth area. His evidence, also, was negative as to identifying Geddes or recalling the seizure, or the use of force.

C.O. 2 Thomas MacDonald stated that he had no knowledge of an inmate having a seizure that day, nor had he ever eaten a meal in the search area.

C.O. 2 Cardigan Williams gave evidence to the same effect and also indicated that if an inmate had a seizure the admitting corporal would have been informed and the incident noted on the records.

C.O. 2 Gordon Cameron gave evidence similar to that of Williams.

It was stated by Commission counsel that a search of the medical records did not indicate a seizure in the search and shower area. It may well be that an inmate did have some difficulty, fainting or passing out, and was brought around without medical help.

C.O. 2 Murray admitted that he was on duty on the day in question. He denied assaulting Geddes. He did not recall any inmate having a seizure that day, but indicated that inmates who worked in the area ate there and had their own table. It may, therefore, be that the meal Geddes took, which he thought was the meal of a correctional officer, was the meal of an inmate.

C.O. 2 James Loran, one of the two union representatives at the jail, was on duty in the shower area. He did not recall the seizure, Geddes, or any incident involving Geddes.

Harrison denied Geddes' allegation with reference to an assault. He, too, did not recall anyone having a seizure in the shower area, or that meals were brought to the shower area for correctional officers, but said that the six inmates who worked in the shower area did have meals there.

EVIDENCE OF CLEM HARRISON

Harrison was aged 43, 5'8½" tall, and weighed 160 pounds. He had been employed at the Toronto Jail for 10 years.

The evidence of Geddes was recounted to Harrison, who said:

A. Sir, I have no knowledge of this allegation. I am upset about it. And I think this man is handling the truth in a careless manner. Or to put it bluntly, I feel he is lying, sir. . . .

MR. BYNOE. From what you say I gather you deny that you at any time punched him or participated in conjunction with any other guards that were punching him?

A. I deny it completely, sir.

Q. And you deny, I gather, that you stepped on his toes or were present when any other officer stepped on his toes?

A. I deny that too, sir.

Q. And you deny that you kneed him or were present when any other officer kneed him, or choked him?

A. That is correct, sir.

Q. Specifically, he made the very clear allegation that it was you, Mr. Harrison, that choked him.

A. Yes, sir. That is pathetic as far as I am concerned. It isn't my way of running . . . I have been at the jail since 1958. I have been in the army previously to that. . . . I attained the rank of corporal and acting sergeant. I have managed men; and pretty well, to my ability. I have the correct approach, I think. I tried to have the correct approach to men. And in no way do I approach men in this manner. I believe in talking to men first, feeling them out first, before you have to summon somebody else in in case of trouble or anything, sir. I believe in approach, talk, first, and, if you can't get anything else, well, then, something has to be done then.

THE COMMISSIONER. What has to be done then?

A. Well, the point is, if it came to the point where a man . . . is refusing to do anything he would have to be restrained, with the minimum force, which we are entitled to do, sir, and put him in segregation, if it came to that. That is what I meant, sir.

Q. Have you ever seen more than the minimum amount of force used?

A. No, I have not, sir.

Q. Have you any recollection at any time of applying any force personally whatsoever to Mr. Geddes?

A. No, I have not, sir.

Q. Did you have any conversation with Mr. Geddes, such as conversation that he related about whether or not he was going to tell the Commission about the shower incident, as I would call it?

A. I would not bring myself to that level to talk to an inmate, Mr. Commissioner or Mr. Bynoe . . . because as far as I am concerned you are leaving an opening there for anything. They can come back on you for anything. I wouldn't be that stupid, sir.

The above indicates the seriousness some correctional officers attach to allegations made against them. It may well be that in isolation and in print the allegations appeared more serious than was intended. Certainly this would appear to be the case with the Geddes allegation.

Having observed Geddes when he gave evidence, I am satisfied that there was an incident. I do not think he imagined the episode of eating someone's meal. From the evidence given by the correctional officers, the meal appears to have been that of an inmate, rather than of a correctional officer.

As earlier stated, I am of the opinion that there was some illness, not of an extent to require medical attention, on the part of an inmate in the area, and that this caused the correctional officers to stop their duties and go to the assistance of the inmate who was ill.

This diversion, which would also have attracted some of the inmates working in the area, gave Geddes the opportunity to take the meal. I am sure that Geddes would not have given such evidence against himself unless he had indeed taken a meal, and it is quite possible that this would be followed by some physical action against Geddes.

Geddes does not describe this reaction as very violent, and even his description of it may well be exaggerated. If this is so, then it may be that he was no more than physically propelled out of the area in a rather abrupt and not too gentle manner.

The allegation that Harrison subsequently talked to Geddes is a little more of a problem. Again, it would be most unusual for Geddes to have invented this. I think that there was some conversation between some correctional officer and Geddes. Geddes identified that officer as Harrison. However, Harrison was adamant that he in no way counselled Geddes not to give evidence, because he realized, to use his own words, that "as far as I am concerned you are leaving an opening there for anything".

If the officer was Harrison, it may well be that the conversation with Geddes was in the nature of "passing the time of day" and that there was a misunderstanding on the part of Geddes as to the content, nature, and purport of the conversation. At least I would like to believe so, and in the absence of any other corroborative evidence, direct or indirect, I am making no finding that Harrison intended to influence the giving of evidence by Geddes. For if Harrison did so, then he did it knowing it to be wrong.

However, Harrison maintained he did not talk to Geddes as alleged.

THE COMMISSIONER. I see. Did you talk to any of the inmates?

A. Not unless they asked me or unless there is going to be trouble or something and we try to solve it or sort it out, that's all, sir.

Q. Other than that you don't carry on a conversation just to pass the time of day or anything like that?

A. No, sir. I am too busy down there in that area . . . with the help of Mr. Loran, I put approximately 200 men through my hands per day, sir, down there.

Q. Have you ever had any run-in with Mr. Geddes, the man whose picture you have before you?

A. No indeed, I have not, sir.

Q. Can you give any explanation why he would want to make allegations against you personally?

A. No, none whatsoever, sir.

The Malayny Allegations

"I never complained to anybody in my life. The only reason I am here, is I have been subpoenaed here or I wouldn't be here. I can take it and I can dish it out too." (Richard Malayny)

"I mean, Grand Jury upon Grand Jury has recommended that the place be torn down for the last 20 years and nothing has been done except a little paint and things like that and what does that do? That don't make the area any bigger." (Richard Malayny)

"I said, 'I'm not in here all the time, you know.' " (Richard Malayny)

"Of course we are always jostling around in the corridor, fooling around. You have to do something to pass the time." (Richard Malayny)

1. First Allegation

EVIDENCE OF GARY DASSY

Dassy said that as a result of the Charette and Conway incidents C.O. 4 Donald McKay ordered Corridors 5 and 6 to be locked up. That is, the inmates were taken out of the day area and put back in their cells. This

was to avoid any more problems that evening. Dassy, looking across the rotunda space, could see the locking up of the inmates in 5 and 6.

Dassy said that there were no problems over this locking up and that 5 and 6 were the only corridors that were locked up at the time, "because, like I say, the hockey game was on, and one of the regulations is they are allowed to watch it in its entirety".

A. But I believe because of the problems of that night, that Sergeant McKay figured later on, about 10:30 at night, you know, the game was in overtime or something like that, I recall, and we could have been there until this game was finished, which meant Correctional Services would have had to pay us all overtime. As a matter of fact we were all paid overtime.

MR. BYNOE. Now you were on 11 and 12 corridors. Did it have any effect on you?

A. Yes.

Q. Were you instructed to do anything?

A. I was — approximately 10:30 we received a phone call.

Q. Who?

A. I didn't answer the phone.

Q. All right.

A. It was the other guy that was on 11 corridor. He said, "We have got to lock them up." Fine. So we locked up 11 corridor. No problems. We came to 12 corridor, which was my corridor —

Q. Two officers?

A. Myself and the other officer. . . . I told them they were going to be locked up now. The TVs would be left on so, if they could not see the game, [they] could hear the game, and with that a fellow by the name of Moose Malayny told me . . . that he and the rest of the inmates were not going to be locked up because they had their rights and I just wasn't going to lock them up. . . . So I went in. I opened the first cell.

Q. Did you have a covering officer?

A. Yes I did, sir.

With so little planned activity for inmates, the hockey games, particularly around playoff time, are a welcome diversion for the inmates, enabling them, vicariously, to get rid of some of their excess energy. Whoever was responsible for preventing them from watching the hockey game to its termination was inviting trouble.

As for Corridors 5 and 6, this would be a different situation. There was already trouble there and it was probably necessary to lock the men in their cells to prevent further trouble and isolate the situation, and it might even be considered punishment. But this should not have affected the other corridors. Dassy's explanation that correctional staff would have to remain at their posts until after the game, and this would mean overtime, is very difficult to understand. Correctional Services or the jail staff would not have been promoted by this consideration. I think that this was wholly in Dassy's imagination. In any case, the decision should have been to permit the inmates to watch the game to its completion if they so wished.

I am satisfied it was Dassy who decided to cut off the viewing of the game in his own corridor. Sports-minded people will well understand the resulting frustration and animosity. Others might liken it to having to walk out of a movie before the end, or having a book taken away as they were about to read the last chapter. Inmate William Malcolm Lavelle, who was in the same corridor, expressed it as follows: "Most institutions, if you are watching a sports game, and it goes into overtime, you are allowed to watch it. Now there was a lot of people interested in this game, and they didn't want it shut off."

The television sets in the old section of the building are located in the day area, and if the inmates were locked in their cells very few would be able to see the visual part of the program, although they would be able to hear the sound.

Dassy, entering Corridor 12, was covered by a correctional officer outside the grille. Dassy had with him the keys for the individual doors.

Q. All of the cells were locked?

A. Yes, sir.

Q. Right. What happened when Malayny voiced his objection?

A. Well, the inmates were sitting in a semi-circle like this watching the game. I opened the first door, and the person that had his back against the door didn't move, so I couldn't pull the door open. . . .

Q. Yes.

A. So I said "Lookit, you are either going in quietly or you are going to go in another way", and Malayny said, "You don't frighten me." . . . and I said, "That's fine", and I locked that door again and I said, "Now I'll give you one minute. You either go my way — or you either go the quiet way or you go my way."

Q. Yes.

A. Malayny said, "I couldn't give a good [deletion] which way", so I says. "Fine. You got your minute." I gave him the minute. I said, "Okay, your minute is up. Are you going?" "No", so I just picked up the phone —

Q. Just let me get this clear. It was Malayny that said that?

A. Yes, sir.

Q. Did any of the other inmates move to obey your lawful orders?

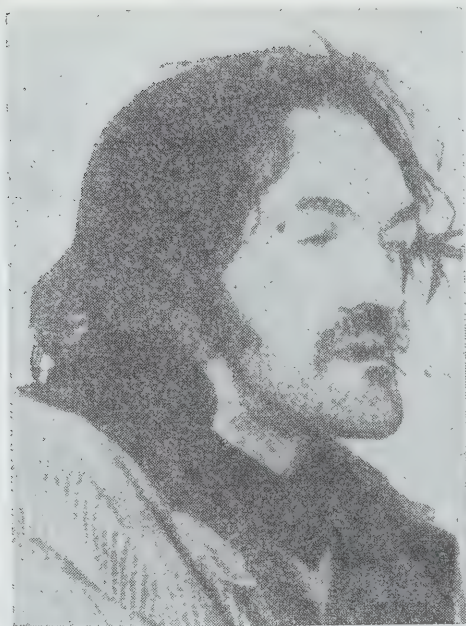
A. No, sir.

Dassy said that Malayny seemed to be spokesman for the corridor and that he was "more or less" stirring up the other inmates. "I gave him his minute or their minute, and I asked him again, I said, 'Are you going to go into the cells?' 'No.' So I picked up the phone, got the Chief's office —"

Dassy said that when he was on the telephone to the Chief's office he asked, "Do you want to send up the fellows?" and then Casey, J. B. Brown, Ralph, and O'Leary came up. He was not definite as to others.

Q. What happened then?

A. Oh, I opened the door then, and they could hear them coming, and they all started running for their cells. So before they, Malayny, got a chance to take off, I hit him one in the stomach.



Richard Malayny

Dassy's bravery in hitting Malayny, who was a big man, even larger than Dassy, was no doubt helped by the presence of the other correctional officers. As he heard the other correctional officers coming, Dassy opened up the grille to the corridor, and he said the inmates started moving towards their cells. They tried to get into them, but they were still locked. "They were all running towards their cells hoping I was going to unlock the cell doors."

As for Dassy striking Malayny:

- Q. Did you tell him you were going to hit him?
- A. No, sir.
- Q. Did you ask him to move?
- A. No, sir.
- Q. Did he say anything to you?
- A. He moved after I hit him.
- Q. Before you struck?
- A. No, sir, he did not.
- Q. Where did you hit him?
- A. In the stomach.
- Q. What degree of force did you use?
- A. A fair degree of force, sir.
- Q. What effect if any did the blow to the stomach appear to have on him?
- A. He turned and took off for his cell, sir.
- Q. What happened then?
- A. He was screaming down at the back, the cell door was still locked.

Q. He was screaming?

A. Yes, they were all screaming by this time. The cells were still locked.

Q. How far down was —

A. Malayny was in No. 9 cell. . . . I believe there was about 28 inmates in there at that time, sir. The first eight cells have bunkbeds, two bunkbeds in them and the last two cells have single beds. It is normal to put only three inmates into one [four-bed cell] because of security precautions. Four people, it just doesn't work, three do, two don't, two would be no good in the cell like that. There has to be an odd number. Putting four together could cause problems and putting two together could cause problems, so there has to be an odd man out. Because in the jail, you know, homosexual acts would take place if there are two men together. . . .

Q. All right, Malayny then did not attempt to retaliate?

A. No, sir.

Q. He went down to his cell?

A. Yes, sir.

Q. Were the other guards in the area at that time?

A. Yes sir, they were all in there at this time.

Q. Now what happened?

A. There was shoving going on between the guards and inmates, there was no blows or forceful blows that I could see being struck but there was shoving. . . . The guards were shoving the inmates. . . . Trying to put them into the cells.

Q. You would not classify that as undue force, would you? . . .

A. I could not really answer that. I know I hit Malayny and I know the other guards were very upset about what had been going on that whole night.

Q. Now then, what happened after?

A. Casey took the key off me for the cells and he opened up all the cells, and we just started throwing them into their cells.

Q. Why was it necessary for Casey to take the key from you?

A. Because I was down with Malayny.

Q. You followed Malayny down?

A. Yes, sir, plus the fact I was a new guard, fairly new, approximately two weeks and they were more experienced guards, and they knew how to handle these type of people better than I did at the time.

Casey acted correctly in taking the keys from Dassy and proceeding to open the cells in order to defuse the situation.

Dassy agreed that "the proper requirement for letting inmates into their cells is for all the inmates to go to the very east end of Corridor No. 12 in the vicinity of the toilets. . . . They are to stand there and then the guard would come in and unlock the first cell inside the door, call the first man up . . . and then go down the line."

He said, "This is done as a security precaution. It is never done that way but for my purpose that night it was going to be done that way because of Malayny, to take the wind out of his sails about not having the cells unlocked. At this time I observed Mr. Farquhar, Mr. McKay, Stan Johnson."

These were the Deputy Superintendent and two senior officers. "They came in just as the last of the inmates were being locked up and I was more or less arguing with Malayny."

Q. Was Malayny in the cell?

A. Malayny was in the cell at this time and locked in.

Q. What was the substantive matter of your argument?

A. It was to do with the cells not being unlocked before they went in.

Q. So you were discussing procedure with him – proper procedure?

A. Yes, I was. . . .

Q. Now, then, Mr. Farquhar, I gather, was not in the area when you struck Mr. Malayny?

A. No, he was not, sir.

Q. Now, then what is the next thing that happened of significance as far as you are concerned?

A. They came down to Malayny's cell.

Q. Who is they?

A. Mr. Johnson, Mr. Farquhar, and Mr. McKay.

Q. Yes, and what happened?

A. They saw me arguing with Malayny and Mr. Farquhar said, "Go back up to the front, Gary – or Mr. Dassy – and I said, yes, sir."

Dassy said that Mr. Farquhar later told him not to argue with the inmates "and if they don't listen when they are in their cells, just walk away, but don't argue ever with an inmate". This would appear to be good advice, as a correctional officer arguing with an inmate would only tend to aggravate the situation.

On cross-examination by Mr. Carter Dassy said that he struck Malayny "because of the trouble that he caused there. He was the ringleader and he was making problems for myself and other guards. . . . There was no violence at all except for my punching Malayny, as far as what I would consider violence, except for shoving matches with other inmates. But there was not, that I could see, any violence."

EVIDENCE OF ALEXANDER FARQUHAR

The Deputy Superintendent of the Toronto Jail, Mr. Farquhar, said that he was in the jail, although not on duty, on the evening of April 30, 1974. He made a point of making off-hours inspections to see that everything was going well and he happened to choose that night. At that time he was living on the jail property in the Governor's House across the road.

He said that while he was in the Chief's office he heard shouting from some part of the old section. He did not know what corridor it was coming from. McKay and he went to investigate and they discovered that it was from Corridor 12 where they found that Malayny and Dassy were shouting in unison. At that time Malayny was in his cell and the trouble had "been resolved" to the extent that everybody was locked away.

"Mr. Malayny was complaining that Mr. Dassy had turned off the television in the middle of a hockey game",

MR. MCRAE. And what did you do?

A. I told Mr. Malayny to cool it. He said, "Okay, Mr. Farquhar, but that bastard Dassy is on my back."

Q. Do you recall those words?

A. Yes, indeed. I ordered Mr. Dassy from the corridor. I settled Malayny down. I recall this instance because Mr. Malayny was eating an orange at the time, and it will always remain in my mind that he was eating the orange without peeling it. He was eating the skin; he was perturbed to that extent that he was eating the orange in that way. I settled him down by telling him to cool it, and he agreed to, but he also exclaimed that Mr. Dassy was on his back, and then I went out and I told Mr. Dassy at the time not to argue with an inmate and that particular circumstance is only derogatory to his position, and could only [cause] further trouble.

Mr. Farquhar said that Malayny did not complain to him of being struck by Dassy. "That's part of Malayny's makeup. He doesn't complain too much about what he has done, or what other people have done to him. He bides his time."

Q. He has a certain code?

A. That's right, yes. . . .

Q. Do you agree with Sergeant McKay, or [Lieutenant] Johnson, that Malayny would test a new officer?

A. Oh, yes, he would.

Q. That is part of his conduct?

A. Yes, he tests them to such a degree that the officer would react.

Q. Would he be cautious about carrying on in a situation where he was outnumbered . . . ?

A. If he were outnumbered, I believe, that Malayny would give up the situation. . . . I found later that by giving Malayny some responsibility — I put him in the laundry. I put him in the kitchen . . . his reaction was different. . . . He had over the years made a name for himself as an objectionable person, but by giving him responsibility he reacted quite well. . . . I knew him to see him, but I know that sometimes the cool approach to an inmate results in a cool approach from him.

Q. And Mr. Dassy wasn't approaching him coolly?

A. No, Mr. Dassy's nature was not of that type. . . .

THE COMMISSIONER. I am wondering if Mr. Dassy may have been even going beyond the cool approach, and might have been acting almost sadistically in turning off a hockey game, particularly a playoff hockey game, while the men were watching it?

A. Sir, I can no more than agree with you that if you have a number of inmates in a corridor, and even if one is reacting in a manner that is not positive, if you are going to lock up that entire corridor just because one inmate is reacting in a manner that you find unacceptable, to turn off a series hockey game at that time can only result in a situation that may well prove unmanageable. . . .

Mr. Farquhar indicated that it amounted to a reprimand when Dassy was

ordered from the corridor, and he felt that no further action was necessary as that was punishment enough for a new officer.

A. I thought the situation was ridiculous; an officer standing three-quarters of the way down the corridor arguing with an inmate . . . through locked doors, and causing other inmates to shout in unison with him, and I thought it advisable that he not be in the corridor at that time at all, and I ordered him out.

MR. BRYANT. Could you gather from what you saw when you first arrived that this argument between Dassy and Malayny had been going on for some time, for some appreciable —

A. I heard it from the Chief's office, sir, and I proceeded up to 12 corridor, and it certainly was going on for some time.

There was nothing in the evidence to indicate that Dassy's action in turning off the television was anything but a unilateral act. It had not been ordered by McKay.

MR. CARTER. I understand, Mr. Farquhar, there was a television in each corridor in the old building; is that correct?

A. That is so.

Q. And those in 12 corridor, would they be able to hear the fact that the television was on in 11 corridor and 9 and 10 corridor?

A. Certainly.

Q. And also across the dome as well, on the other side of the dome?

A. I believe so. They knew they were being restricted from television when other people were not. . . . They were told in any playoff game they could see it to the conclusion.

The underlying cause of the trouble in Corridor 12 was the high-handed way in which Dassy was dealing with the inmates. There is great danger that a certain type of correctional officer will wrongly use his power over the inmates for no other purpose than to exercise power, and this appeared to be the case with Dassy on that evening. The fact that other television sets were still on in the old building would confirm that there was no order by Mr. McKay to turn off the sets or to lock up inmates prior to the end of the game.

EVIDENCE OF DONALD MCKAY

McKay said that he was in charge of the shift in the old jail and had been on an inspection of all the corridors. He returned to the Chief's office and recalled being told then that there was trouble "locking up" on Corridor 12, and he proceeded with Mr. Farquhar to Corridor 12. He found that the inmates were locked up. He remembered a shouting match between Dassy

and Malayny, "one was as bad as the other", and Farquhar ordering Dassy out of the corridor.

McKay said that Malayny did not complain to him about being kicked or hit, nor did any other inmate in the corridor. He stated that other correctional officers were there, but he could not recall who they were.

EVIDENCE OF RICHARD CHARLES MALAYNY

Malayny said he was 39, single, and living with his parents. Because of surgery on his legs which had not healed he was on "medical welfare" at the time he appeared before the Commission (April 11, 1975). He admitted to a record that went back to 1952 and included automobile theft, breaking and entering, assault, and manslaughter.

He was 6'4" in height and weighed 190 pounds. He gave his evidence in a rather light-hearted way. One could well envisage him as a happy-go-lucky ringleader type who might test a new correctional officer for the fun of it and to entertain the others in a corridor and yet if handled in a mature way would co-operate. He would react quickly if he thought there was an injustice. Before the Commission, he was at all times co-operative and candid.

MR. MCRAE. So, as nearly as you can tell us you were in the Toronto Jail on a detention order for a weapon charge when this incident happened involving you, is that right?

A. That's true, yes.

Q. Was there a Stanley Cup hockey game on?

A. Sure, I remember that is when the first incident happened. . . .

Q. And what corridor were you?

A. The one facing Gerrard Street on the third floor, this is 12, isn't it?

Q. Yes, what happened that precipitated the incident? . . .

A. Well, Dassy was on that day, and when he comes on, he likes to have control of things, to run it the way he wants. We had the full range of the game prior to that and when he took over he wanted to lock us up early, so we didn't budge. So he made a phone call and extra guards came up, and I spoke to the white shirts and I told them what it was all about, and then I was talking to Dassy. The white shirts gave him a reprimand for talking to me. Like, we were arguing.

Q. You say that you were entitled, you thought you were entitled to watch the entire hockey game?

A. Well that's what we were told for the playoffs.

Q. And there was a playoff game on?

A. Yes.

Q. Can you tell us why you were not allowed to watch the entire game this night?

A. I guess, on account of the way he wanted to act, this here Mr. Dassy.

Probably this is one of the reasons he is no longer with the Don Jail.

Q. Was there any other reason, was there any trouble in the corridor, or anything like that?

A. Trouble, no. The only trouble was him coming on and taking over a shift. Everything was cool until then.

Q. But when he came in and took on the shift, what did he do?

A. He wanted to lock us up, so we didn't budge.

Q. You say lock you up, you mean put you in your individual cells?

A. Yes, in our individual cells, but he never tried to put anybody in the cells, or to open the doors, so nobody could get in. So therefore he was in the wrong there, because if he did, we would have went in. So, he caused the incident for nothing. . . .

Q. So, you say you didn't go into the cells, you didn't go into your cell?

A. No, sure. We didn't go in, we didn't have an opportunity to go in, he was on the phone so fast. That's what I explained to the white shirts. If he opened one door and nobody went in, then he would have a reason to phone, because then they would refuse to go in, but he didn't do that.

Q. But there was some refusal to go in the cells, I take it?

A. They were a little hesitant, but we would have went in.

Q. You wanted to watch the rest of the game?

A. Sure, what is the sense of seeing half a game, and then going in and missing the other half? No sense in even stopping to see it . . . So, I mean, he made that incident himself, you see. There is no proof that nobody would go in, because they never gave the opportunity by opening the door. . . . So, there wasn't any really big incident. Except, I got an elbow in the stomach. Not an elbow in the stomach. I got a shot in the stomach.

Q. What is a shot?

A. A punch.

Q. A punch?

A. Yes, a blow.

When Malayny was asked to identify the correctional officers who attended at Corridor 12 on the first incident, he was quite candid in indicating that he could not make identification and this was certainly preferable to the guesses that had been made in connection with other allegations.

Malayny said, "They opened the grille and some of them rushed in. There was one inmate laying on the floor, over by the steam pipes, and he got a boot in the head. In fact, he is the one that got the worst out of it, and he was just having a sleep."

Q. Somebody got a boot in the head?

A. Yes. So, we seen that play there, and we went down the back of the corridor, to get out of the range of what was happening. My friends pushed me down there, because they didn't want me to get involved in anything.

Q. Had you been in the forefront of the earlier argument with Mr. Dassy, about not going into the cells?

A. That's right. I explained that all to the white shirts and everything. They came right to me, like, I was in the forefront of the argument with Mr. Dassy.

Q. And what happened to you?

A. What happened to me? I got a shot in the stomach.

Q. Where did you get the shot in the stomach, and who from?

Malayny said he received the "shot in the stomach" from Dassy.

Q. You got a shot in the stomach, got a punch in the stomach?

A. Yes, got a punch in the stomach. I think he hurt his hand too, he got the worst of it.

Q. Did he hurt his hand when he hit you?

A. He should, I have got a pretty iron-clad stomach.

Q. Mr. Dassy just got the one punch in the stomach? I beg your pardon?

A. One shot, and if he would have hurt me, or something, he might have given me another one. It seemed to have no effect so he didn't give me any more.

Q. Was there any other correctional officers there?

A. Naturally, there was other ones there. Like I say, I can't remember them. What I had in my mind, they would come and see me, because I was a pretty good inmate at that time. For once in my lifetime being in that place I was working down the laundry, I was working in the kitchen. They are going to come to me and ask what happened, and like I told them what happened. The guard tried to throw us into the cell early, we couldn't see the rest of it, the game. Just because he is in that mood, he wants to run things the way he wants.

Q. This guy, you mean Mr. Dassy?

A. Yes . . . we were arguing, and he knew I was right I guess, and it hurt his feelings, and he let a shot go, you know . . .

Q. Did you hit him or use any force on him?

A. Oh, no, not with all them witnesses, I wouldn't want to be charged. . . .

Q. Were you charged with anything as a result of this?

A. Oh, that there, no, no.

Q. That was the end of it as far as you were concerned?

A. Yes, as far as they were concerned, too. . . .

Q. Did you complain to anybody about it?

A. I never complained to anybody in my life. The only reason I am here, is I have been subpoenaed here or I wouldn't be here. I can take it and I can dish it out too.

2. Second Allegation

EVIDENCE OF RICHARD CHARLES MALAYNY

As for a second incident involving Malayny, Dassy, in his evidence, said he was told about it by C.O. 2 Edward Dowhey and C.O. 2 Charles Casey, and it involved Dowhey. Malayny had used some obscenity to Dowhey and

Dowhey and a group of other correctional officers, including Casey, took Malayny out of Corridor 12 and over to segregation.

Although Dassy said it occurred in July there was an entry by Dowhey in the Corridor 12 log about Malayny being placed on charge on May 11. Also, the log for 3B segregation indicates that Malayny was placed in segregation. Dassy indicated he could have been in error as to the date.

Malayny's evidence with reference to the second incident was as follows:

MR. MCRAE. You were working as a corridor man and in the kitchen in April and May?

A. Later on I was working as assistant corridor man.

Q. Assistant corridor man?

A. Yes.

Q. And was there another incident that happened later, while you were a corridor man?

A. Yes, there was another incident and this was all foolishness to start with. Because, there was just, we were just ribbing each other, and it resulted in me getting charged, and the next day going to the hole, because it was a carry-on and the guy wouldn't let me out of my job. I knew it was true what happened at the time. Childish things, you know. If the guy wanted to do something he should have done it at the time, not the next day, and then, they don't let you out to do your job. When the guy knows I have a bad temper to start with. . . .

Q. Would you tell us what happened at this time? . . .

A. Well, I was out on the landing [outside Corridor 12] . . . well, you know like inmates, guards frolic around sometimes too, you know, in a good-natured way, only one fellow didn't take it that way, and I am the one that took the brunt of it because I was charged.

Malayny said it was a quiet day that preceded the day of the incident. There were some officers on 11 and 12 landing and they were teasing Dowhey, who was working on 9 and 10 landing. Malayny said that the correctional officers on 11 and 12 were throwing wet toilet paper at Dowhey. Dowhey looked up and saw Malayny, who was looking down at Dowhey. Dowhey asked who was throwing the paper and the correctional officers laughed and joked and Dowhey was convinced that it was Malayny. However, as Malayny said, nothing happened that night.

The day after the toilet-paper-throwing incident, Malayny was still assistant corridor man and Dowhey was the correctional officer on Corridor 12. Malayny said he asked to be let out of the corridor for the purpose of going about his duties. "I can see by him not letting me out that he was holding a grudge, and I was saying a few things, you know, that I probably shouldn't have, but I was hot."

A. I said a few things and I guess after that he took action and got on the phone, and that's when I was led down on the way to the confinement cells . . .

Q. What time in the morning would that be?

A. I tried to get out before breakfast because we helped arrange the dishes in preparation for being put into the corridor so that the inmates could get it as

they go by.

Q. Would it be seven o'clock, or something of that nature — eight o'clock?

A. They normally have breakfast around that time, yes.

Q. You said some things to Mr. Dowhey?

A. Yes.

Q. What did you say to him?

A. Oh, in a threatening nature, like — I said to him, I says: "You got to go home sometime", and, I said: "Your car is easy to follow", and you know, things like that.

Q. Did he already tell you that you weren't going to be corridor man that day. Is that it?

A. No, he didn't tell me. Eventually he would have let me out, I guess, but I carried on in such a manner that he more or less figured I deserved a charge, I guess.

Q. So you threatened to follow him home, did you say?

A. Well, I made out things in that nature, like, what could be done. I said, "I'm not in here all the time, you know."

Q. You were inside the corridor, and he was outside the grille, was he?

A. Yes.

Q. Can you remember anything else that was said to him?

A. No.

Q. Could you have said something else to him?

A. Oh, I could have — probably did.

Q. What happened then?

A. Then I seen him get on the phone. At that particular time I had the feeling it was for me to eventually be led over to the new side.

Malayny rather candidly reported the conversation he had with Dowhey and the threat he made, and he said that he was not surprised that he was taken to the segregation cells, — "in fact, I expected it".

When the safety of a correctional officer and his family is threatened, it is understandable that there should be some concern on the part of the correctional officer. Another correctional officer might have ignored such a threat, particularly coming from someone like Malayny. On the other hand, the man had a record of manslaughter and there appeared to be some possibility that the threat would be carried out.

Looking back at the underlying causes of the confrontation between Dowhey and Malayny there may well have been some resentment on the part of Dowhey about what had taken place the previous night. In this, the other correctional officers were acting rather childishly and they should at least have admitted to Dowhey that, even though Malayny may have enjoyed Dowhey's discomfort, he was not to blame. Also, like a good parent, a correctional officer should not carry over grudges from the previous day. One must consider that, with so little activity and so very few things that an inmate can derive any satisfaction from, being corridor man, or even an assistant corridor man carried with it, to someone like Malayny, some satisfaction and maybe even some status. Correctional officers should be trained on attitudes and should have an appreciation of the importance that

an inmate might place on being an assistant corridor man.

A slightly different interpretation was put on the event by the segregation log book and the Misconduct Report.

Malayny was charged with "neglect work, indecent language, disobey order, attack and threaten to attack, detrimental conduct". The report stated that "throughout the morning inmate Malayny has been a constant aggravation, doing his utmost to disrupt . . . No. 12 corridor. Because of the description of the charges stated above being lengthy please refer to the attached sheet."

The additional comments attached to the report were: "Re Richard Malayny, Sir: This morning I asked Malayny to get out of bed to assist in serving breakfast. He refused. After breakfast I instructed him to bring out the dishes and spoons; again he refused, still lying in bed. Please note that inmate Malayny is the corridor man. During and shortly after lock-up Malayny informed me that I should [deletion] and later described me as a [deletion], asking the other inmates if they agreed. At this point the remaining inmates nervously agreed, except William Lavelle.

"At this point Malayny grabbed inmate Lavelle by the neck from behind causing Lavelle to be short of breath, and his face flushing. After ordering Malayny to release Lavelle two times he finally did so.

"I sent Malayny to the dome. Mr. Johnson and Mr. McKay notified. While travelling to the 3B landing via the elevator Malayny asked if he was going to 'the hole'. I answered in the affirmative. At this point he replied: 'I'm going to the hole because of a [deletion] like you.' At this point Malayny 'swung' at me, missing when I moved. I had to restrict him from further blows to protect myself. Respectfully submitted, Ed Dowhey."

MR. MCRAE. After you had the argument with Correctional Officer Dowhey, was there much of a lapse of time, before you were taken to segregation?

A. I think around three-quarters of an hour. or more. . . . He was busy doing other things, you see —

Q. Well, first of all, Mr. Dowhey says that you refused to assist in serving breakfast. . . . That is a little different from what you say. You said you had a verbal argument with him and in fact you wanted to go out in the corridor.

A. I wanted to go out in the corridor? . . . Well, you see, assistant corridor man, and a corridor man might have something between them, that you don't know anything about. He told me he would take care of the breakfast. I said I could sleep a little later.

Q. But Mr. Dowhey's allegation is: "He refused to get out of bed to assist in serving breakfast."

A. Yes, because that is the corridor man's obligation. It's not the assistant corridor man. But, I see I am listed corridor man, but I wasn't corridor man, I was assistant corridor man. There is a difference. Lesser work for the assistant corridor man than there is for the corridor man.

Q. Did you call him these names that he described?

A. Like I said before, I said certain things. I don't want to put them in words, but, however, I see they are words.

Q. You did call him those words?

A. I imagine I did. Sure I did.

Q. I beg your pardon?

A. I did, sure.

Q. Did you ask the other inmates if they agreed?

A. Well, they agree, sure.

Q. They all agreed because they were afraid of you?

A. Well, the way it states it, it looks that way, so I have to go along them lines.

Q. I want you to give your evidence, and not what you have to go along with.

Did you attack William Lavelle, whatever his name is, for refusing to agree?

A. Why would I attack him, in the eyes of officers? I would have went to outside court. Do you understand?

Q. You say that is not true there?

A. Well it is obvious this is not true. I would have went to outside court. . . .

Q. Did you attack Mr. William Lavelle as described by Correctional Officer Dowhey?

A. I hardly think so. He is one of my best friends in the corridor. I know him outside and inside. Of course, we are always jostling around in the corridor, fooling around. You have to do something to pass the time. No, I never attacked him, I didn't.

Malayny's reference to playing around in the corridor would indicate again that, because of the lack of a planned program and in order to occupy themselves, some of the inmates resort to what is commonly known as "horsing around".

From the rotunda, Malayny was taken to the segregation cells in the new building.

Q. Did you see who the escorts were?

A. Like I say, I recollect Mr. Casey, because he is so big, he stands out. I guess pretty well everyone has named him.

Q. Anyone else?

A. Like I say, not that I can recollect. I had other things on my mind at the time, and when I have certain things on my mind, I block out other things, and then I can't recollect.

Q. How many correctional officers were with you, as you went down?

A. There was about seven or eight of them.

Q. And you identified Mr. Dowhey, Mr. Casey, and no one else.

A. That's right.

Q. Did anything happen to you in the tunnel?

A. No. Nothing happened, just walking up. I knew where I was going, so I might as well get there as soon as possible.

Q. Go ahead and describe what happened.

A. And they opened the door to the elevator . . . And we all got in the elevator and I was in the middle, and there was no room for anybody else on that elevator, so I was pretty well jammed. . . . And then I received a blow to the stomach, with an elbow. I went down. Knowing how many were around, I stayed down, until I got off the third floor, they dragged me off, and then I went into the hole.

Q. Who hit you with an elbow?

A. Oh, Mr. Dowhey.

Q. Anybody else?

A. No.

Q. How many times were you hit?

A. Just once. . . .

Q. Why did you go down?

A. Well, if I didn't go down, I might have got hit again.

Q. You weren't knocked down, you sat down.

A. Well, using my head, I think.

Q. You are sure he hit you with his elbow?

A. Yes, you think I don't know an elbow from a fist. I can assure you I do.

Q. Did it have any effect on you, the force of the blow, what was it like?

A. It took the air out of me. It was unexpected. You see, he was right beside me, and all of a sudden — But I had a feeling it was coming, because I seen a little signal given by the white shirt, and boom. Perhaps there was a reason for that. I happened to see this and that, and they figured we will teach him a little lesson, you know. . . .

Q. How did you get into segregation, from there, after the elevator doors opened?

A. Well, if you are laying on the floor of the elevator, I let them drag me around until we got into the grille of the segregation area, and then I walked in the cell, and then they shut the door and that was it. . . .

Q. Did anything untoward happen to you when you got over to the segregation area?

A. No. Except, they closed the door, I didn't like that, but, however —

Q. Wasn't that usual?

A. Yes, it's usual, but —

Q. You didn't like being in the small segregation cell?

A. No.

Malayny was questioned by Mr. McRae about that part of Dowhey's report indicating that, while travelling in the elevator, Malayny asked about going to "the hole" and when Dowhey answered in the affirmative Malayny swore at him and then "swung" and, as Dowhey says in his report, "I had to restrict him from further blows to protect myself."

Malayny was asked if he did swing at Dowhey.

A. With eight guys there I am going to take a swing at him? I must be pretty stupid, I know I have been stupid in the past but however I have learned plenty since then. There is no way I would have — not in their ball park, no, I would not.

Q. You are saying you did not do that?

A. Naturally, I did not.

Q. He said, "I had to restrict him from further blows to protect myself."

Was there any restricting by Mr. Dowhey, or just what you have described?

A. No, if I knew exactly where I was going I could have walked there myself.

I do not accept Dowhey's statement in this regard. It is against all probability that Malayny, who had caused no problem from the time he left Cor-

ridor 12 until he was in the elevator, would suddenly take a swing at Dowhey in that confined space and while in the presence of other correctional officers.

This is not a case of an inmate being difficult and having to be forced to go to segregation and fighting along the way. I therefore accept Malayny's evidence and I think Dowhey did unwarrantedly put an elbow into Malayny's stomach in the elevator and that Dowhey's reference in his report is not factually correct but is solely for the purpose of covering up his action. I watched carefully the demeanour of the witnesses, particularly Dowhey and Malayny, when giving evidence, and Malayny gave a straightforward story. Malayny having admitted other transgressions, I do not doubt for a moment that he would also have admitted striking or swinging at Dowhey in the elevator if he had done so.

Concerning the "signal" from a "white shirt" before Dowhey elbowed Malayny in the stomach, I would prefer to think that this was misinterpreted by Malayny. The signal, if there was one, may have been to indicate that the elevator was to be put in motion.

In Part 2 of the report, C.O. 5 Stanley Johnson wrote: "Inmate Malayny had to be restrained from attacking Officer Dowhey while being placed in segregation." This could be interpreted to mean either while he was being put in the segregation cell or on his way to segregation, and I suggest in future that, where there is any suggestion of an attack by an inmate the place of the alleged attack be very clearly set out. One would have thought that if this occurred in the elevator Johnson would have so indicated. Also, the nature of the attempted attack should be indicated, that is, an attempt to choke, or swing at, etc.

In the absence of any more definite corroborating information, I do not think I should make a finding supporting the statement of Dowhey as set out in his report. Malayny said that he did not suffer any injury as a result of the blow in the elevator, nor did he make any complaint to anybody about it.

Mr. Carter in his cross-examination brought out the fact that the main cause of the second incident was that the arrangement made between Malayny, as assistant corridor man, and the corridor man, concerning who was to get breakfast was not communicated to the correctional officer (Dowhey), and the problem continued to grow during the morning.

MR. CARTER. But before you were taken out of the corridor, by that time you were very angry. Am I right?

A. Oh, yes, I figured I was done a great injustice.

Q. And you were swearing at the officer?

A. Oh, I admit all that.

Q. There was a lot of trouble that had built up?

A. Yes, I guess, on a personal basis.

Q. Isn't it fair to say that you knew that you were going to have to go to segregation, and it was just a question of when? Isn't that right?

A. Right, sure.

Malayny conceded that he had been "fooling around a lot" with his friend Lavelle.

Q. He and you were fooling around in the corridor that morning?

A. Oh, we fool around every day.

Q. And it may well be that the officer got the impression that you were trying to muscle Mr. Lavelle. Isn't that right?

A. That's true. He could have got that impression.

Q. You heard that's what he said in the report?

A. Yes.

In connection with the arrangements between the corridor man and the assistant corridor man, it would be advisable that all duties performed by inmates should be specifically set out in precise terms and kept where they can be seen by both correctional officers and inmates. This would prevent the sort of misunderstanding that may have occurred between Dowhey and Malayny that morning.

As for the jab in the stomach in the elevator, I find that it did in fact occur, but that it was not of any great physical significance.

The main point is that Malayny's going to segregation could, in my view, have been avoided had there been a clearer definition of his duties and rights as assistant corridor man, and had there been some way in which Malayny's excess energies could have been siphoned off other than by fighting, even playfully, with Lavelle in the corridor. A more experienced correctional officer than Dowhey might have recognized this as mere horseplay. Dowhey, without knowing Malayny and Lavelle very well, may have misinterpreted it, and sincerely wanted to protect Lavelle. Dowhey's judgment may have been, in some part, affected by the horseplay among the correctional officers the evening before. This was, of course, unprofessional, and must have had the effect of demeaning Dowhey in the eyes of inmates.

It is all very well for correctional officers to engage in good-natured banter and joking, but this should not be done in the presence of inmates. There may even have been some egging on by Malayny, who was permitted out of the corridor.

EVIDENCE OF WILLIAM MALCOLM LAVELLE

This inmate was 25 years of age, with a Grade X standing as an automobile mechanic. After graduation, he worked in a garage and in a service station. His record went back to 1967 and it involved thefts of motor vehicles, dangerous driving, possession of stolen property, and a concealed weapons charge.

Lavelle said he was grabbed by Malayny around the neck, causing him to be short of breath, as alleged by Dowhey. He denied that Dowhey ordered Malayny to release him on a couple of occasions. He indicated that they were indulging in horseplay. He confirmed that Malayny did not get up for

breakfast that morning. He stated, "You don't have to have breakfast. Like you got to be out of bed by a certain time. A lot of guys have breakfast and go back to bed for half an hour or until they lock the corridor area . . . after the cleaning has been done."

He agreed that Malayny was using foul language which could have been directed towards Dowhey and that Malayny was very upset when he was taken out of the corridor to go to segregation. Malayny had indicated that there was bad blood between him and Dowhey.

A. I would like to state one thing to the Commission. Mr. Dowhey . . . took me out of the corridor and he told me that he didn't like Moose, he said: "I don't like him." Right, a lot of people don't like him. He said: "Well, I'm going to have him taken out of the corridor one way or the other." . . . This was just prior to the 11th, maybe a couple of days before. There was a lot of horseplay going on in the corridor. Mr. Dowhey didn't like it. So he said: "I am going to get Malayny one way or the other." . . . The morning he took him out, Dowhey came back up and said my name was in the report . . . that they might call me down. Now he was bragging, like more or less bragging to me. "Well, Malayny is going to grab 10 days, we won't see him for 10 days." So the guy was more or less out to get him. Him and a few other inmates.

Q. Malayny and a few other inmates?

A. Right. Like the guy made it quite obvious.

Q. You mean Malayny was set up for this thing?

A. He knew that Moose had a bad temper. . . . When he wanted Moose to bring the dishes up, people were still eating, still eating and still there drinking coffee. Like, it was just, to me, it was just a thing, to get on his back, to get him hot, and to lock him up. This is what it was to me. Then [Dowhey] called me out of the corridor, when he came back from the segregation cells, and there was something – I don't know, I think he said that he wanted Moose to try and take a shot at him.

Q. Did what – told you he wanted Moose to take a shot at him?

A. Yes.

Q. When?

A. On the way to the cells. He said: "I wished that he had taken a shot at me, because I would have punched him out bad." Like the guy definitely walked around the jail with a big thing on his shoulder.

Q. Who is this?

A. Dowhey. Like he is supposed to be God or something. If [he says] something, you have got to jump when he says it.

EVIDENCE OF STANLEY JOHNSON

There is also the evidence that C.O. 5 Johnson gave at the hearing, and that was with reference to the swing at Dowhey. "When we neared the elevator Mr. Malayny turned and took a swing at Mr. Dowhey, and Mr.

Dowhey dropped him with one. Had he taken the same swing at me, I would have done the same thing."

Q. Well, you say that Mr. Malayny pretty well told it the way it was?

A. That is correct.

Q. Mr. Malayny said, I believe, it was on the elevator?

A. At the elevator, yes. Just as the doors opened, going into the elevator.

Q. Did it happen on the elevator or ——

A. Well, partially on the elevator and partially off. In the process of going into the elevator.

THE COMMISSIONER: I thought you just said a moment ago it was near the elevator.

A. It was near the elevator there. He was mouthing off.

Q. I thought you said it was near the elevator that he took a swing at Mr. Dowhey.

A. Well, as I recall, sir, the elevator door was just opening at the time. We were pretty well in the process of entering the elevator. It was right at the front of the elevator.

Q. What you are saying now, it was right, just about as you are stepping into the elevator?

A. Yes, just about as we were stepping on the elevator.

Q. More in the corridor or more in the elevator?

A. It could have been half and half.

I find this evidence of Johnson unsatisfactory and I believe that he changed his ground during his examination by Mr. McRae. This may have been done to protect Dowhey.

Johnson conducted the investigation, which is Part 2 of the Misconduct Report. He reduced the charges laid by Dowhey (neglect work, indecent language, disobeying order, attack and threaten to attack) to one of disobeying an order, and he even qualified this, as follows: "I investigated the above charge and found that inmate Malayny might be guilty of disobeying an order inasmuch as he refused to get out of bed when ordered to do so."

It may also be inferred that he supported the charge of threatening to attack by adding: "However, inmate Malayny had to be restrained from attacking Mr. Dowhey while being put in segregation." Johnson explained that it was not for him to judge the inmate. He said he was merely indicating what he thought was right — "that it should be dropped down to one charge of disobeying an order". He said that the Superintendent "might see fit to convict him on all charges".

THE COMMISSIONER. I am wondering if the most serious charge was not the one of attempting to strike a correctional officer?

A. It could have been from another charge, sir, but not the original. There could have been a charge laid of attempting, but very seldom we lay a charge of attempting.

Q. But it says here, in Part 1, after "disobeying the order" it says "attacked and threatened to attack a correctional officer".

A. That is the section, attack or threaten to attack, and I think he threatened to

attack Mr. Dowhey in the corridor. He threatened to get him on the outside, so it would be threatened to attack.

Q. But here is something that happened right in front of you, that you witnessed.

A. That did not happen in front of me.

Q. No, but I say, you are here and here is another matter that happened in front of you that you witnessed. That, you say, is separate from these matters set out in this report.

A. That is correct, sir.

Q. Should there not be a Misconduct Report on that, on attempting to strike a correctional officer?

A. Not really, sir, I don't think so, because you always have problems taking them to segregation. It is either mouthing or swinging around, or swinging at an officer. This is the expected thing.

Q. Maybe expected, but I don't think it should be expected, and I think it should be something that should be punished and there should be a hearing on that the same as there is in connection with disobeying an order.

A. All this is related to the Superintendent, sir, in conjunction with the order, with the misconduct, if he sees fit to proceed on the misconduct, on the original.

In view of the fact that Johnson did not include in his part of the report witnessing an attack by Malayny on Dowhey either at or on the elevator, and considering the seriousness of any such attack, I have grave doubts about accepting the evidence that such an attack did occur. If it had occurred, then it most certainly should have been set out in Johnson's report.

Greater care should be taken in completing Misconduct Reports. Particularly, it should be indicated in each part what breaches are being considered, and if there is a discrepancy between the various parts of the Misconduct Report as to what offences have been breached, then there should be an explanation.

Mr. Byrant brought out the point that force was not necessary to escort Malayny to the elevator and that, as far as the alleged "swing" at Dowhey by Malayny was concerned, Johnson had no idea why Malayny might have done this.

Johnson also stated that the misconduct of "attack and threaten to attack" in Part 1 of the Misconduct Report occurred in the corridor. This is another point negating the alleged "swing" by Malayny taking place in the elevator as alleged by Dowhey.

EVIDENCE OF EDWARD EUGENE ROSS DOWHEY

C.O. 2 Dowhey had been on staff at the Toronto Jail since September 1973 and took a three-week course at Guelph in May or June 1974, which was

after the second Malayny incident (May 11, 1974). Prior to that he had completed the correspondence course. At the time of giving evidence he was 26 years of age, 6'5" in height, and weighed 253 pounds.

As happens from time to time, not only in penal institutions but in the outside community as well, persons of great height and size are subjected to challenges from persons of lesser stature wishing to prove themselves. Dowhey and Malayny were, however, not very different in height. Dowhey outweighed Malayny, but Malayny had the advantage of experience and years. It may well be, as had been indicated in the inquiry, that Dowhey felt that he was being challenged by Malayny in one way or another and that this time it was Dowhey who felt he had to prove himself.

Dowhey recalled the wet-toilet-paper-throwing incident on May 10. He said that it was two correctional officers who threw the paper. He knew Malayny was not responsible. As for events on May 11, 1974:

MR. MCRAE. Would you just tell us what caused the problem that morning?

A. From what I can recall, and this is going back a year now. 6:30 in the morning we get three loud rings for the inmates to arise and get out of bed. Usually . . . I open up in the vicinity of about 6:55 a.m., go along the cells, telling the guys that they have to get out of bed . . . I came to Mr. Malayny's cell. I told him to get out of bed to help me serve breakfast.

Q. He was assistant corridor man?

A. I don't know if he was assistant or, you know, or the corridor man. I have no idea.

Q. Do you recall asking him to get out of bed and help you serve?

A. Yes.

Q. How would you serve breakfast, hand it through —

A. The front of the corridor. He came outside the corridor and would be with me. Now when I came to him I said to get out of bed and he swore at me. I says, okay, fine, I says, you know, you're up anyway, and I just continued unlocking other cells. On the way back I believe I asked him again to get out of bed. He was lying under the sheets. He [was] just swearing at me. I says, okay, that's fine. It still didn't bother me. Went out. I had one of the other inmates come out to serve breakfast into the corridor . . . about 20, 25 minutes later . . . I saw Malayny was still in bed. Again I believe I told him to get up; again he swore at me. Going from my memory here, now, when they finished breakfast he still wasn't out of his cell.

Q. When would this be, 6:55 —

A. It could be anywhere from 7:30 to 7:45 . . . I know he still hadn't got out of bed. I went into the cell again, into the corridor again I believe, and I told him to get up. He still used profanity. All right. I let that ride. So I had someone else take out the dishes.

Q. Another inmate?

A. Yes, sir. . . . After that, clean-up began. And I am not sure, when I went in to lock the cells, if Malayny was still in bed or had gotten out of the cell or [was] just getting out of the cell when I was actually locking the cells up. Then things progressed, and I just kept ignoring him, you know, right through the morning, because usually I got along fantastic with Malayny. It must have been one of his bad days.

Q. You had no trouble with Malayny?

A. No, no trouble before. Very co-operative. The last incident I recall before I took him out of the corridor was when . . . Malayny had Lavelle up against the grille in the front of the corridor.

Q. That would be down here where you were?

A. Yes, sir, I was standing six or seven feet away. He uttered some profanities and for some reason he grabbed Lavelle around the neck from the back and started choking him. I ordered him to let him go. I could see Lavelle's face was starting to flush. After I ordered him to let him go, I ordered him twice, then I believe he released him and I took him from the corridor.

If Dowhey's evidence is correct, then he was justified in removing Malayny from the corridor. Even on the basis of Malayny's own evidence as to what occurred, there was justification for Dowhey to remove Malayny from the corridor and take him to the Chief's office.

Dowhey said that Malayny was upset that Lavelle had not agreed with his obscene comments about him (Dowhey) and that that was why Malayny attacked Lavelle. The contrary evidence was that Malayny and Lavelle were just "horsing around".

As for the charges on the Misconduct Report, Dowhey said, "The actual attacking on this charge sheet is Malayny attacking Lavelle. The threatening was me — when he threatened to attack me."

Q. Tell us about that. When did he threaten to attack you?

A. He was in the corridor, I believe, the first time. He told me things would be different on the street, you know, you are a big tough guy in here. I could not make anything of this because I got along well with Malayny all the time. He said, you know, "I'm going to get you; I know what kind of a car you drive: I can follow you home."

Q. He threatened to get you in the street?

A. Yes, sir.

Q. During the morning and in the corridor as well?

A. Yes, sir.

Q. Why was he so upset with you?

A. I have no idea.

Dowhey testified: "As we got on the elevator, the doors were closed, the elevator had started to proceed up. He says, I am going to the hole because of a [deletion] like you or something to that effect, and he swung at me and then I hit him before his punch made impact on myself."

MR. MCRAE. All right. You say that the elevator doors were closed?

A. I don't know. They could have been partially closed, partially open, or closed.

Q. But it was certainly in the elevator?

A. Oh, yes.

Q. Mr. Casey was there?

A. I believe so.

Q. Lieutenant Johnson was there?

A. Yes.

Q. And you were there?

A. Yes.

Q. Could there have been anybody else there?

A. No.

Q. Malayny said there were about eight correctional officers.

A. Impossible, no, sir.

Q. Mr. Malayny swung at you?

A. Yes, sir.

Q. Before his blow could connect, you hit him?

A. Yes, sir.

Q. Did you see him start to swing?

A. Yes, sir.

Q. You must have moved very quickly?

A. I learned to, it helps.

Q. You did?

A. Yes, sir.

Q. Where did you hit him?

A. Somewhere in the stomach area, I believe upper chest or stomach.

Q. What was the effect of the punch?

A. He went down.

Q. You knocked him right down?

A. Yes, sir.

This evidence did not jibe with that of Johnson. Dowhey apparently tried to waffle a bit, as he had originally stated, "the doors were closed, the elevator had started to proceed up". Dowhey indicated that there was no one else in the elevator other than Malayny, Johnson, Casey, and himself, which differed from the evidence of Malayny.

Some of the discrepancy as to the number of correctional officers on the elevator may be explained by the fact that although there were only three escorting Malayny, additional ones may have joined the group as it proceeded along, or it could be coincidental that other correctional officers were also using the elevator at the same time but for different reasons. On the other hand, Dowhey may have been correct on the total of three officers in the elevator.

Dassy claimed that Dowhey's intestinal fortitude was being challenged and that this was the cause of the elevator incident. Dowhey denied this.

Q. And that is basically what Mr. Dassy said Mr. Casey told him occurred, and Mr. Casey was asked about it, and he said that he could have said that to Mr. Dassy, and it is basically what Mr. Malayny said as well. He said that when you got off the elevator and he was surrounded, he said, by correctional officers – I think his estimate was eight, he said: he saw them give an indication, and then he saw your elbow come, but it was too late to do anything about it. What do you say about that version?

A. One thing, I didn't hit him with my elbow; I hit him with my hand. What is true is what I told you. There were not a group of eight in that elevator. See, you can't go by size. Okay, I am big. I push weight around. That's what a lot of

people think. I'm a quiet guy. I don't like too much aggravation. I'm easy to get along with. I honestly think I am one of the most popular guards in that jail. I don't have to go out of my way to push my weight around. There's no reason for it, why?

Q. And you did not attempt to teach Mr. Malayny a lesson?

A. What's to teach? I like the guy. I have had no problems before that, or since that incident, and still it was myself that gave him that corridor man job. . . . I gave him the chance. I had no problems with him until that one day.

Dowhey said that he did not resent Malayny's profanity. "I take that every day of my work at that jail." He also said he thought it was immaterial whether the profanity was in front of other correctional officers.

Dowhey admitted there was some ambiguity in his report with reference to the threatened attack, and said, "That was for him threatening me, and to attack me on the street" and not the alleged swing.

THE COMMISSIONER. Wouldn't it be better in future when you give details of the misconduct, to set out the misconduct as it would apply to the charge?

A. Yes.

Q. The form asks for details?

A. Right, sir.

Q. But you have no details of that misconduct that you say was the reason for your writing: "threat to attack"?

A. You are right there, sir — true.

Dowhey was asked if he could have ducked out of the way of Malayny's alleged swing, to which he answered, "When you are going on reflex like that — Malayny is dangerous — I am not going to start thinking of other alternatives in a situation like that, he was turning on me, I seen the punch coming. I am not going to start thinking, well, how am I going to grab him. I seen an inmate dead on the floor and another inmate killed with one punch. All it takes is one lucky punch." Whether this was the true situation at the time or not, it does indicate the danger and hazard to which a correctional officer might be subjected.

Dowhey elaborated on his statement that he was one of the most popular correctional officers, and answered, "I give most of the prisoners a fair shake. If they're in the right, I'll go to bat for them more or less if they need somebody. If they don't I won't. Okay, you have some prisoners, asking the guards: 'Can you get this for me?' They finally say, 'Yes', and they take off and they don't see them for the rest of the week. That infuriates the prisoners. Usually if a prisoner asks me during the lunch hour to pick up a pair of pants, or something, I'll say: 'If I can get it fine, but I'm not promising; so if I can't get it it's impossible.' They say: 'Okay, boss.' I'm fair that way with them."

This indicated an appreciation of carrying out undertakings and promises when made. There was other evidence during the inquiry that this is important in so far as correctional officers' treatment of inmates and their inter-relationship is concerned.

EVIDENCE OF CHARLES CASEY

Casey was coming out of the tea room when a senior officer asked him to go along with Dowhey and Malayny to segregation. He said this officer could have been Johnson. It was Casey's evidence that Malayny was being escorted by Dowhey, himself, and two senior officers and that Malayny walked by himself. Nothing unusual occurred either on the stairs or in the tunnel, Casey said.

A. Now I should say when I gave my statement to the officers, the police officers, I hadn't remembered too much about this, but since I have talked to Mr. Dowhey about it, it has sort of refreshed my memory about it a bit. So I know a bit more about it than I usually would.

MR. MCRAE. Yes. You know about it from your own recollection?

A. Mostly from what Mr. Dowhey told me . . . I did give my statement to the police and in my statement I had put that I never saw Mr. Dowhey hit Malayny and Mr. Dowhey told me that he did hit Malayny.

THE COMMISSIONER. When he told you that, did you recall seeing him hit Malayny or are you now going to just relate what Mr. Dowhey told you?

A. I am relating what Mr. Dowhey said.

Q. Did you see it yourself?

A. If I was there, sir, I probably seen it but I can't remember.

I strongly suspect that Casey's evidence was affected by the "refreshing" of his memory by Dowhey. Casey said he knew Malayny quite well as an inmate, so that when they arrived at the elevator he asked what the problem was. He then said that Malayny recounted the events and "what he said was actually what he said in the courtroom the other day". This again shows a consistency in the testimony of Malayny.

In addition to being told about the second Malayny incident by Dowhey, Dassy had related in his evidence that Casey had told him that Dowhey struck Malayny with one punch in the elevator and Malayny went down. Commenting on the conversation Dassy reported having with him, Casey said: "Yes, it is possible, I am not saying I did but I would not say I did not, either. I can't recall telling him that but I may have."

MALAYNY SUMMARY

There is no doubt that Dassy was responsible for precipitating the first incident. Nor is there any question that Dassy, without provocation, assaulted Malayny with the admitted and unwarranted punch in the stomach to the inmate. He was the sole correctional officer who used unnecessary force under the circumstances.

Only some of the evidence with reference to the second Malayny allegation has been reviewed above. A reading of all the evidence leaves little doubt that, in addition to issuing threats against Dowhey, Malayny uttered insulting and slanderous remarks. I have no doubt that Dowhey was provoked. The striking of Malayny in the stomach by Dowhey, whether by punch or elbow, is not in dispute. I cannot accept that it was a defensive move, either as a protective measure or by way of an involuntary response. I therefore must conclude that it comes within the ambit of "use of unnecessary force".

Because of Malayny's experience in a number of institutions and his delightful candour before the Commission, he was also questioned about matters at the Toronto Jail in general. Some of his observations were as follows:

If there was something to occupy their (the inmates') minds in the form of recreational facilities, that would be a big aid. . . . They would work off their frustrations and work off steam, instead of getting rid of it in other ways which might result [in] one inmate [taking it out] on another or through inmate to guard.

. . . there is too many people crammed into a small area and, like, you can't walk up and down without hitting somebody on the shoulder, you know, by accident. That is how small it is.

So a person who has never done time before that could have an effect on him giving him claustrophobia, and who knows what he is liable to do in that state of mind. Like, there has been hangings up there and everything else, you see.

The St. James Allegation

"... out came the bed instead of St. James. And then out comes St. James, throwing cups." (Gary Dassy)

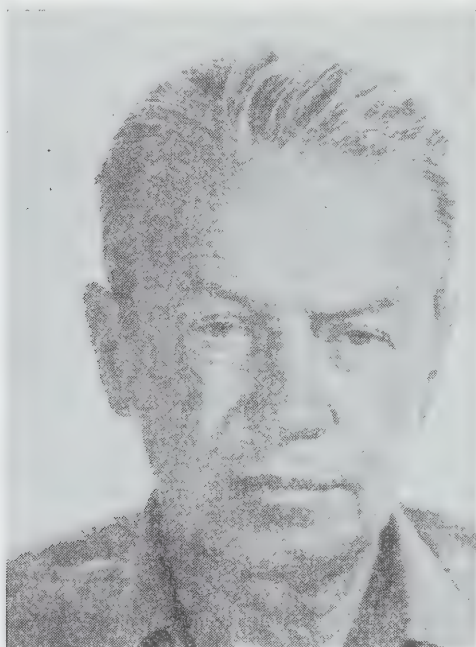
"I had my tie off by this time because St. James, like, he was going to maybe pick a fight." (Gary Dassy)

EVIDENCE OF GARY DASSY

One of the incidents related by Dassy involved inmate Charles St. James. Dassy described him as being "a bit of an eccentric". He said that he first met St. James on a Sunday in May 1974, when St. James threatened him with a bucket of milk.

He indicated that this incident was taken care of without any physical confrontation. It is related for other given reasons. A second matter is also briefly mentioned to illustrate that St. James could be a difficult inmate. He was a man of 57 who, probably because of long years spent in jails and prisons, looked older than his stated age. He was born in Ontario and his record included some 40 charges between 1933 and 1974. The common denominator of most of these charges seemed to have been theft.

It was only with reference to the third event, which is reported in more detail, that Dassy claimed excessive force was employed against St. James. Dassy gave a Monday in May as the day and month of this third occurrence.



Charles St. James

In addition to St. James and himself, Dassy alleged the other principal parties involved were C.O. 5 Stanley Johnson, C.O. 2 Samuel Curry, and C.O. 2 Lloyd Robinson.

Although there was evidence to support St. James having been assaulted, for reasons which are later discussed I am of the opinion that Dassy was in error as to the time, for jail records show that there was no day in May when all four correctional officers were employed on the same shift. They were, however, on duty in June at the same time and the evidence of Robinson would indicate that this was more likely the correct month.

The "milk episode" is related in the following interchange.

MR. BYNOE. Where were you threatened?

A. In the corridor. He had the bucket of milk and would not give it up.

Q. Where was Mr. St. James at this time?

A. In 5 corridor, sir —

Q. And you were where, inside or outside?

A. I was outside. The guard that was with me was [C.O. 3] Jimmy Doherty —

Q. And you say you requested the milk bucket?

A. Yes, sir.

Q. And what did he say or do?

A. "Come and get it; no young punk is going to tell me to give the milk bucket back."

Q. Right. What if anything did you do?

A. I was going to go and get it and Mr. Doherty said, "No, we will wait our time and we will get him when he cools off a bit."

Q. Right. Now then, what else happened so far as you are concerned next with respect to St. James?

A. Well, I got the milk bucket back off him.

Q. How?

A. Well, he calmed down after a while and I – I think it was that day later in the afternoon I had him out and I was talking to him and he apologized for what he had done saying he didn't like being in 5 corridor and I said, "Well, I'll see what I can do." He said he'd like to go up into the annex so, I mean, I said, "I'll see what I can do." So I went down I believe it was and I seen one of the chiefs. I told him what had happened. I said, "Don't put him in the annex," I said, "put him in the 2 corridor that is the overflow from 1A." I said, "If he wants to act like one of the nuts," I said, "Let him join them."

Q. So you told St. James you were going to try to assist him to get up to 2 annex?

A. Yes, sir.

Q. But when you spoke to the chief you gave a different opinion?

A. Yes, sir.

Q. All right. Now then, what happened after that?

A. He was put into 2 corridor, sir.

Q. Is that what you suggested?

A. Yes, sir . . . That is where we keep the not too violent ones from the overflow of 1A hospital.

Q. Where is 1A hospital?

A. 1A hospital in the new section of the jail.

The above reflects adversely on Dassy's suitability as a correctional officer. Two things that he did, or was prepared to do, were obviously wrong. One was that he wanted to go in immediately and challenge St. James whereas Doherty, the other correctional officer, indicated that they should wait and let St. James cool off a bit, and apparently, when this was done and Dassy went in later, St. James apologized.

Then, the more serious matter or at least equally serious, was that, when St. James put in a request to be transferred to the annex where there are dormitories Dassy indicated to him that he would see what he could do, meaning that he would try and make the arrangements, but instead of doing that he suggested to one of his superiors that St. James be put into Corridor 2 which, at that time, was being used partly as an overflow of 1A hospital. 1A hospital housed some of the psychiatric cases.

St. James would undoubtedly be upset at being led to believe that he was going to be transferred to the annex and then to find himself in Corridor 2. More than one witness, when questioned as to the attributes of a good correctional officer, indicated that he should not make promises that could not be kept, and that once he made an undertaking to an inmate he should carry it out.

Dassy then reported an event that took place the same day at about 9:00 p.m. when C.O. 1 George Thompson was locking up the cells of Corridor 2.

A. Charles St. James had been locked in, and he asked if he could get out to get a glass of water. So Mr. Thompson went back and made the mistake of letting St. James out. Instead of St. James coming out, out came the bed.

Q. How many people are in the cells in 2 corridor?

A. One per cell, sir.

Q. One per cell?

A. For a total of 18 . . . Out came the bed instead of St. James. And then out comes St. James, throwing cups. Now he ran up and down the corridor knocking all the inmates' cups off the cell bars and started picking them up and throwing them at Mr. Thompson.

Dassy said that at that time he was working on Corridors 5 and 6 and that he looked down and saw St. James being led away.

Dassy said that the next time he had anything to do with St. James was on a Monday, also in May. He was in the tea room having his lunch when C.O. 5 Stanley Johnson came in. "He said, 'Come with me, Gary. We have got problems.' " C.O. 2 Samuel Curry went with them.

They then went up the stairs leading to 2 and 3 annex. "On the way up, I said 'What's going on up there?' and Stan turned to me and he said, 'St James is acting up,' and I said, 'That figures.' "

Q. All right. Where did you go and what did you see and what did you do?

A. . . . the three of us went up to 2 annex ———

Q. What happened when you entered the annex area with . . . Lieutenant Johnson and Curry?

A. We walked down. St. James was in the cell. I believe it was either 8 or 9 cell, in the centre annex.

The annex contained both open, unlocked cells and a dormitory arrangement of beds.

A. Mr. Johnson was in front and he opened the door and he said, "Come with me St. James." St. James said, "What for?" Mr. Johnson said, "You know what for, let's go." . . . I had my tie off by this time because St. James, like he was going to maybe pick a fight.

Q. What was there to cause you to reach that conclusion?

A. Knowing the last two instances of the bucket of milk and the throwing of the cups.

Q. So that was the background of your knowledge of the man?

A. Yes, sir.

Q. Is there anything else that caused you to say St. James looked like he was going to put up a fight?

A. His attitude when Mr. Johnson said, "Let's go, you know where you're going, you know what for."

Q. All right. What was the demeanour of Mr. St. James that led you to that conclusion? What did he say or how did he look?

A. I cannot recall what he said, it was just a feeling that I had.

Q. A feeling you had?

A. Yes, sir.

Q. So you were preparing for the possibility of requiring force to take St. James where he was going to have to go?

A. Yes, sir.

Q. So in preparation for that you took your tie off?

A. Yes, sir.

Q. All right, then, what happened?

A. There was no need for it then. St. James came quite peacefully down the stairs back out to the landing of the second floor, the balcony.

When Dassy was giving this evidence one could sense his disappointment that there was no incident.

St. James was 57 years of age and, Dassy said, "for want of a better word, he was senile".

When they got to the top of the stairs that led down to the rotunda, St. James started to "scream and holler". Dassy said that he had St. James in a come-along hold.

Dassy described holding one of St. James' arms extended. The arm was held by the wrist and also above the elbow to apply pressure on the elbow. Dassy said that he was the only one holding St. James because there was only room for two people to go down the stairs side by side. He thought that Curry was in front and Johnson behind them.

Q. Now, St. James was yelling. Do you recall what he was saying?

A. I can't recall right now exactly what he was saying, he was hollering to the lawyers. . . . Well, with all the hollering and that, and the lawyers looking on, it was advisable to get St. James down the stairs as fast as we could.

Q. As far as you were concerned, you were doing nothing improper?

A. No.

Q. Nor was Mr. Johnson or Mr. Curry?

A. No, sir.

Q. But out of necessity your view was that you should move him as quickly as possible?

A. Yes.

Q. What happened?

A. Well, I still had him in that hold all the way through to the rotunda.

Q. You came down the stairs through to the first floor?

A. Yes, sir.

Q. That would be in view of everyone in the dome area?

A. Yes.

Q. That would include of course the Legal Aid offices here, the medical records section, the lawyers and the professional counsel in this area here?

A. Yes, sir —

Q. Where were you intending to go?

A. Down in the basement, sir.

Q. For what purpose?

A. To take St. James to the segregation cells.

Q. Is that the most direct route?

A. Yes, sir.

Q. Was that the normal route?

A. Yes, sir.

Q. All right. Was any force being applied to the person of St. James at that time other than what you have described?

A. No, sir, except the come-along hold, that is all.

Dassy said that he started down the stairs leading to the basement corridor.

Q. What happened then?

A. Maybe four steps from the bottom Mr. Johnson said, "Let him go." . . . Three or four.

Q. Three or four steps from the bottom Mr. Johnson told you to let go of St. James?

A. Yes, sir.

Q. All right, and by that did you ——

A. I let go.

Q. You let go, all right. What happened?

A. St. James fell the rest of the way down the stairs.

Q. As far as you were concerned did you push him?

A. No, sir.

Q. Was there any deliberate act to propel him down the stairs?

A. No, sir.

THE COMMISSIONER. The manner in which you were holding St. James and then released him, did that unbalance him in any way considering that you were going down the stairs?

A. Yes, it could very easily have, sir. . . .

MR. BYNOE. Now then, you indicate that St. James fell, is that right?

A. Yes, sir.

Q. Did he hit anything on the way down?

A. I believe he went into the wall.

Q. Which wall?

A. The far wall in the basement.

Q. What happened then?

A. Mr. Johnson said, "All right now, rehabilitate him."

Q. Are those the exact words of Lieutenant Johnson?

A. Yes.

Q. May we hear them again please?

A. "Now rehabilitate him."

Q. Are you sure those were his words?

A. Yes, sir.

Q. He did not say, that is Lieutenant Johnson did not say, "He needs to be rehabilitated"?

A. Those were the words, "He needs to be rehabilitated." I got — I remember him saying that exactly.

Q. Mr. Dassy, which is correct?

A. "He needs to be rehabilitated."

- Q. Lieutenant Johnson said to you, "He needs to be rehabilitated"?
- A. Yes, sir.
- Q. Those were the only words he said?
- A. Yes, sir.
- Q. Would you tell me what happened then?
- A. Then we proceeded to rehabilitate St. James.
- Q. Now who proceeded to rehabilitate him?
- A. Sam Curry and myself.
- Q. Now when you say you proceeded to rehabilitate him, would you tell the Commissioner what you did and what Mr. Curry did?
- A. We started to punch St. James.
- Q. First of all would you tell the Commissioner what you did and then tell the Commissioner what Mr. Curry did.
- A. We were punching him ——
- Q. You used the word "we".
- A. I was punching St. James.
- Q. Where did you punch him and how?
- A. All over his body, stomach, I don't believe I hit him in the face.
- Q. Any reason why?
- A. Because we did not want to leave facial marks that could be identifiable, if he was to see a lawyer or somebody of that nature.
- Q. I see. How many times did you strike Mr. St. James?
- A. I cannot say for sure how many times I struck him. I believe it lasted approximately three minutes.
- Q. All right. Now, you seem to indicate that you hit him pretty well everywhere except his face?
- A. Yes, sir.
- Q. All right, what did Mr. Curry do?
- A. He did the same, sir.
- Q. What degree of force did you use with your blows?
- A. They were not — they would not have been the same force that I would use on a younger person.
- Q. You held back a bit, is that what you are indicating?
- A. Yes, sir.
- Q. The degree of force that you did use, did it seem to have any effect on Mr. St. James?
- A. Yes, it did, sir.
- Q. What effect did it have?
- A. He started hollering that he was an old man, that he had a heart condition and he was sorry for what he had done. I don't know what he had done. I was following what Mr. Johnson said.
- Q. We will get back to that in a moment. Did you kick Mr. St. James?
- A. He was kicked, I don't know if it was there.
- Q. Let's just stick to this incident at the bottom of the stairs that you have described. My question to you was, did you kick Mr. St. James?
- A. I believe I did, yes, sir.
- Q. With your boots?
- A. Yes, sir. . . .

Q. What boots did you have?

A. I had my army boots, sir.

Q. Is there anything – what colour were they, to start with?

A. They are black, sir.

Q. They are black, yes, is there any particular type of construction used in those boots?

A. I had them toe-capped, sir.

Q. And what do you mean by that, Mr. Dassy?

A. Steel-toed, sir. . . . The first day I joined the army we were issued boots and I had them taken in to be toe-capped because this is how the Canadian Army issues you boots —

Q. You indicated that you then kicked St. James?

A. Yes, sir.

Q. You were wearing these boots?

A. Yes, sir.

Q. Did Mr. Curry kick St. James?

A. I believe he did, sir.

Q. And when you use the word “believe”, are you reconstructing – are you saying he did, or you are not sure?

A. When you say kick, with a man like him, you don’t use the toe or anything, you use this part.

Dassy indicated that St. James was kicked “in the rear section” with the top part of the instep of the boot.

Q. Did Lieutenant Johnson strike Mr. St. James?

A. Not at this time, sir.

Q. Did Lieutenant Johnson kick him?

A. No, sir.

Q. But Lieutenant Johnson was there and observed what you and Curry were doing?

A. Right, sir.

Q. Now, you indicated that Lieutenant Johnson said to you and to Curry, “He needs to be rehabilitated”?

A. Yes, sir.

Q. Now, with those words you and Curry started to hit St. James?

A. Yes, sir.

Q. Do the words “he needs to be rehabilitated” mean something special to you?

A. Yes, sir.

Q. What did it mean to you?

A. He needs a lesson, sir.

Q. When Lieutenant Johnson said “he needs to be rehabilitated” and it meant to you he needs a lesson, why did you strike St. James?

A. Because this is how it is done in Don Jail, sir, and this is how Mr. Johnson operates, sir.

Q. Now, had you previously been instructed or had you previously been told that any inmate needed to be rehabilitated by Mr. Johnson?

A. Oh, yes, this happened on a number of occasions with Mr. Johnson.

Q. Just to continue on with that then, with respect to Lieutenant Johnson, on what prior occasions has he told you that an inmate needed to be rehabilitated; and when I say prior, I mean prior to this date with respect to St. James?

A. I have had talks with Mr. Johnson ———

Q. Is this prior to St. James?

A. Oh, yes, right.

Q. Would you then, I don't want to put you off your train of thought, but I will bring you back to that. You said you had a conversation but I want you to tell us if you can a prior occasion when, that is prior to the Mr. St. James incident, that Lieutenant Johnson has told you that a particular inmate needed to be rehabilitated?

A. He has never mentioned a particular inmate by name.

Q. All right.

A. He has told me and other guards there that this is the way he operates and this is what he expects us to follow.

Q. All right. No, I am going to come back to that again, Mr. Dassy, but I want to just be specific. On the day that you were taking St. James downstairs you say Lieutenant Johnson said "he needs to be rehabilitated" and with that you took it to be an instruction to you and to Curry to assault the prisoner, is that right?

A. I took it that way because if it was not meant that way he would have stopped us immediately.

Q. Now, to go back to my question, at any day prior to that, any day before that, had you had custody or control of any inmate when Lieutenant Johnson was present and Lieutenant Johnson told you that that inmate needed to be rehabilitated?

A. No, sir, not prior, but afterwards ———

Q. Before the St. James incident there were no inmates that you had control over that he told you they needed to be rehabilitated?

A. No, sir.

Q. Then before this incident with St. James at any time had Lieutenant Johnson told you to rehabilitate anybody else?

A. Not in those words, but I have been told by Lieutenant Stan Johnson that any inmate that gave me trouble, drop him.

Q. Mr. Dassy, just to be clear because we are going to continue on with this, and I am not shutting you off, but I am trying to get the time between the time you started and the St. James incident?

A. Yes.

Q. Did you have a conversation with Lieutenant Johnson about the use of force by you with respect to inmates, before St. James?

A. All I can say is what Stan Johnson has told me on a number of occasions, as I started at the jail, before the St. James incident ———

Q. All right, that is fine, before St. James, now, would you tell us please what instructions you received or what conversation you had with Lieutenant Johnson between the time you started on April 10, 1974, and the day that you have described as the St. James incident?

A. I have been told once that I can recall vividly, if an inmate, when I first

started there, giving me a hard time ——

Q. Let's clear this up if we can. Is this a conversation with Lieutenant Johnson?

A. Yes, sir.

Q. Where did it take place?

A. It took place in and around the rotunda area, sir ——

Q. And you indicated that you had had some trouble with an inmate?

A. Yes, sir.

Q. Would you tell us what you told Lieutenant Johnson and what Lieutenant Johnson told you?

A. Okay, I told him about the Vickers incident.

Q. What is the Vickers incident?

A. He is an inmate at the jail.

Q. Yes, what was the problem?

A. He had a big mouth and he was more or less ordering the other inmates what to do. He was in 2 corridor ——

Q. You told Lieutenant Johnson ——

A. It was a Sunday night, I told him ——

Q. Just you tell us as near as you can recall what you told Lieutenant Johnson?

A. I had the trouble with Vickers on Sunday and I seen Stan Johnson on Monday. . . . He asked me, he said, "I see you got yourself into a bit of a bind with Vickers."

Q. Where would he see that?

A. I told him.

Q. When you say "see" I thought perhaps you were referring to a report, Mr. Dassy.

A. No — I told him that Vickers had mouthed off to me and was telling the other inmates what to do. I said I then told Vickers he had more tongue than a Mountie's boot and if he did not shut his mouth I would haul him out and give it to him. I did this in front of witnesses, which you don't do ——

Q. Yes, you told Lieutenant Johnson that. Did you tell Lieutenant Johnson you did it in front of witnesses?

A. Yes.

Q. All right, did you tell him anything else?

A. I told him — then after that he said, "Look, Gary, you are new here," he said, "the next time Vickers or anyone else gives you problems and I am here, you call me, and I will take Vickers down and I will show him — I will put Vickers into the hole and he will wish he had never seen me or anybody else again."

Q. Now then, do you recall any other words that Lieutenant Johnson used other than the words that you have just told us?

A. "I will drop him."

Q. Are those the words that Lieutenant Johnson used?

A. Yes.

Q. "I will drop him"?

A. Yes.

Q. When did he say that?

A. On the Monday ——

THE COMMISSIONER. On the matter when he said “I will drop him” those are the words that you say Lieutenant Johnson was using?

A. Yes, sir.

Q. Referring to Lieutenant Johnson dropping him?

A. Yes, sir.

When Dassy returned to give evidence in the afternoon of November 28, he explained in a more definite manner what he meant by “rehabilitation”. Lest there be any misunderstanding as to what he had in mind by the word, Dassy said, “The only thing I can describe the word so that – for the records so that it will be understood, the word ‘rehabilitation’ that is used in the Don Jail is a form used instead of saying, ‘Let’s go and beat the man, we shall rehabilitate him.’”

If Dassy was telling the truth, then this was the cruelest of uses of a word that means just the opposite in the parlance of civilized people.

MR. BYNOE. Now, having Mr. St. James in that location, and having related what transpired, what happened after that, Mr. Dassy?

A. Stan Johnson said “That’s enough for now.”

Q. This is Lieutenant Johnson?

A. Yes.

Q. Now . . . at any time from the time Mr. St. James hit the wall at the bottom of the stairway . . . did Lieutenant Johnson say to you – what if anything did he say before “that’s enough for now”?

A. Well, there was the part about rehabilitation.

Q. Right. After that?

A. After that, about three minutes after that, or very close to three minutes, he said, “That’s enough for now, fellows.”

Q. “That’s enough for now”? At any time during the time that you and your fellow officer, Curry, were raining blows on Mr. St. James, did Lieutenant Johnson say anything to you?

A. No, sir.

Q. The first words were “that’s enough for now”?

A. Yes, sir.

Q. What happened then?

A. We then grabbed St. James on either side of us – I grabbed his arm and proceeded to take him over through the basement to the elevator. . . .

Q. As you were proceeding with Mr. St. James, Mr. Curry on one side and you on the other, what, if anything, happened?

A. A guard by the name of [C.O. 2] Lloyd Robinson —

Q. Do you know Robinson?

A. Yes, sir.

Dassy had no difficulty identifying Robinson by photograph.

A. Well, Mr. Robinson was coming west along the passageway.

Q. He would be coming from the new building towards the old building?

A. Yes, he had a meal in one hand, and as we were walking east along the passageway he spotted — seen St. James and he said, “You are at it again, St. James” and he punched him in the stomach with his fist.

Q. Who did this?

A. Mr. Robinson.

Q. And you were holding one arm?

A. Yes, sir.

Q. And Curry was holding the other?

A. Yes, sir.

Q. Where was the lieutenant?

A. Watching.

Q. Was he in front or behind?

A. He was behind, sir, or to the side —

Q. So in the presence of a senior officer it is your evidence that Robinson hit St. James?

A. Yes, sir.

Q. Where did he hit him?

A. In the stomach with his fist. He stepped in front of him, punched him in the stomach, stepped around him and continued on his way with his meal.

Q. He didn’t drop the meal?

A. No, sir.

Q. Did he miss a step?

A. No, sir.

Q. Now, what effect if any did that seem to have on Mr. St. James?

A. He gave a gag and that was about it.

Q. What degree of force were you able to judge was used by Robinson with that blow?

A. I wasn’t paying too much — I didn’t realize it was coming. I didn’t — I wasn’t expecting that he would do it with a meal in his hand.

Q. Well, the meal in his hand, would you just tell me how — was it on a tray?

A. No, in his hand with another green plate over it to keep it warm.

Q. All right, so he would be carrying the plate in one hand and the other hand would be open or free?

A. Yes, sir.

Q. He did not drop the meal?

A. No, sir.

Q. And you were holding on to Mr. St. James’ arm?

A. Yes, sir.

Q. Were you able to feel any reaction by Mr. St. James to the blow?

A. No, sir. I wouldn’t be able to say anyway, sir —

Q. Would you just listen, is your answer that you did not feel any reaction by Mr. St. James to the blow, or is your answer you do not recall?

A. I didn’t feel any reaction, no sir —

THE COMMISSIONER. There had been some suggestion earlier that two of the correctional officers might jab someone in the stomach and not mean anything ill by that, they do it in a sort of bantering way.

A. Yes, sir.

Q. You mentioned that this morning. Is that what Mr. Robinson did?

A. No, sir. It was a punch to the solar plexus.

Q. This was not in the nature of a bantering sort of touching?

A. Not in the way that I have been punched by, I guess, by Mr. Farquhar and Mr. Zodiates.

Q. . . . what was the effect on Lieutenant Johnson when this was done?

A. None to my knowledge, sir.

Q. Did he say anything or do anything?

A. No, sir.

MR. BYNOE. After that happened, did Lieutenant Johnson say anything?

A. No, sir.

Q. And there is no doubt in your mind, is there, as to whether or not guard Robinson would be able to see Lieutenant Johnson in his white shirt in company with you before he struck the blow?

A. Oh, yes, sir. There is no doubt in my mind at all.

THE COMMISSIONER. Pardon me, Mr. Bynoe, did Lieutenant Johnson see this incident?

A. Oh, yes, sir.

MR. BYNOE. What happened after that, Mr. Dassy?

A. We got over to the elevator ———

Q. St. James, you and guard Curry, as well as Lieutenant Johnson entered?

A. Yes, sir.

Q. What if anything happened there?

A. The elevator door was closed. Stan Johnson stood in front of him. He said, "Have you learned your lesson yet, St. James?" And I believe St. James said, "Yes, sir, please don't hit me any more," and Stan Johnson said, "Well, I don't think so", and Sam Curry and I hit him a few more times on the way up in the elevator . . .

Q. Did he say anything else before you and Curry hit St. James again?

A. No, sir.

Q. He said nothing to you?

A. No, sir.

Q. Did he give any signal by hand or gesture to you?

A. No, just the look in his eyes portrayed what was expected of us.

Q. When you say that, did he turn and look at you?

A. Yes.

Q. And then he turned and looked at Curry, is that what you are saying?

A. Well, both. Sam Curry and I were standing together, so — on either side of St. James. . . . Just from the look in his eyes, sir, to me it is quite evident what he meant by it, but I can see it is not evident here.

Q. Witness, you don't have to rationalize the answers to the questions. If you will just answer the questions I can assure you that we will bring out what we want to bring out. We don't have to perhaps go step-by-step; and if there is anything you don't understand, you ask me to re-phrase the question or if there is anything that you wish to be brought out that has not been brought out, you can advise me to bring it out, all right?

A. Yes, sir ———

Q. Which way was St. James facing?

A. By this time with his back against the door.

Q. Back against the door?

A. When he first went on the elevator he was thrown on to the elevator.

Q. By whom?

A. By Sam Curry and myself.

Q. Was that on any specific instructions of Lieutenant Johnson?

A. No, sir.

Q. Would you agree with me that the normal way of riding in an elevator is for a person to put their back towards the back wall of the elevator and look out the front?

A. Yes, sir.

Q. All right. When St. James was thrown in the elevator, did he adopt that position?

A. No, sir, he landed up against the wall, face first, to the elevator.

Q. Did he turn around?

A. We turned him around.

Q. You turned him around. Were you on one side and Curry on the other?

A. Yes.

Q. Facing out?

A. No, we pushed him back against the door because by this time the door had closed.

Q. When you say you pushed him back against the door, what part of Mr. St. James was against the elevator door?

A. His back —

Q. How long did it take, in your opinion, to go from the basement to the third floor?

A. Not any longer than 10 seconds. . . .

Q. Is there any way when you are inside of determining whether that elevator will stop at the first floor?

A. Not to my knowledge, sir. If somebody was to put a key into the door on the first floor, then the elevator would stop at that floor, or you could press the button from the inside.

Q. So as far as you are concerned, when you were in the elevator with St. James, you did not know if it was going to stop at the first floor?

A. No, sir.

Q. And the same holds for the second floor?

A. Yes, sir.

Q. And you indicated you and Curry hit St. James in the elevator?

A. Yes, sir.

Q. Can you recall whether you punched him or what did you do?

A. He was punched, sir.

Q. By who?

A. By me and Curry.

Q. Did Lieutenant Johnson punch him?

A. No, sir.

Q. Did anybody kick him?

A. No, sir.

Q. What was the conversation, if any, on the part of St. James?

A. "Don't hit me any more. I'm an old man. I have got a heart condition."

Q. From your knowledge of Mr. St. James, was that true?

A. No, sir —

Q. You didn't believe it?

A. No, sir, I didn't.

Q. All right.

THE COMMISSIONER. What part didn't you believe was true?

A. The heart condition, sir.

Q. What happened, if anything of significance, other than that, on the ride up to the third floor?

A. None that I can recall right now, sir.

Q. Right. What happened when you arrived at the third floor?

A. We took him off. . . . We took him into the back of 3B where the segregation cells are.

There followed a discussion as to who might be riding in the elevators. It was indicated that unescorted inmates would not be in the elevators, but visitors might be there with escorts, and medical staff or social workers. Dassy said that a female social worker would be escorted by a male correctional officer.

There were separate elevators for females and these had no exits on the floors that were designed solely to house male inmates.

It was also brought out that lawyers, having signed in to the jail, might ride the elevators unescorted to the second and third floors.

MR. BYNOE. Now then, you arrived at the elevator and you indicated that he went into 3B.

A. Yes. . . . into the segregation area, where he was told to strip.

Q. Is that normal routine?

A. Yes, sir.

Q. And then what happened?

A. As he took off his clothes he was struck again by myself and Sam Curry.

Q. Why?

A. Because he wasn't moving fast enough.

Q. Before you delivered a blow or blows, and before Curry did, was anything said by Lieutenant Johnson?

A. He stood there and watched, sir.

Q. Before you delivered the blow or blows and before Curry did, did Lieutenant Johnson say anything?

A. He did say something. After we started, he said, "That's enough, fellows. I do believe that he is hit. That's enough, fellows. He should have learnt his lesson now."

Q. That was just after those blows?

A. Yes, sir —

Q. What, if anything, happened then?

A. Stan Johnson, you know, was talking to St. James at the cell doors. . . .

Q. All right. Now is there anything else you can think of that you would like to add or qualify?

A. No.

Q. With respect to St. James?

A. I have no idea what St. James did to get what he got. I was never told. And I don't even know if he was properly charged or even sentenced. Even right now I don't know why, you know, we had to do what we did to him except that we were told to do it.

The St. James incident is one of the most serious of the allegations made, for it indicates the admitted participation by Dassy in the beating of a man who was old enough to be his father. Indeed, Dassy did not even inquire about the circumstances before joining the fray.

But even more serious than this, according to the evidence of Dassy, if it is to be believed, the beating took place not only in the presence of a senior officer but as a result of the act of encouragement of a senior officer.

Dassy's allegation brings the whole moral fibre of the jail into question. For if it were prevalent, the welfare of the inmates would be not only at the whim of line officers, but also at the caprice of senior officers whose duty it was to exercise control over and provide guidance to the line officers. Fortunately, there were few such allegations that proved to be of substance. On the occasions when they were of some merit, it pointed up the lesson that without careful selection and training of senior officers, much of the teaching of line officers would go for nought. For as Edmund Burke has so aptly said, "Example is the school of mankind."

On cross-examination by Mr. Carter, Dassy said that the expression "rehabilitate" was quite a common figure of speech in the jail. Dassy also said that within the first week of his working at the Toronto Jail, Johnson had told him not to take "any lip from inmates" and to follow his (Johnson's) orders. With reference to this last there could, of course, be no criticism of the information given to Dassy.

EVIDENCE OF CHARLES ALPHONSE CHRISTOPHER ST. JAMES

St. James was first called to give evidence with reference to the Somerton incident, and then he was questioned on his own assault as alleged by Dassy. He appeared to be an intelligent and well-spoken person. I felt, however, that he was a rather reluctant witness and that he hedged on some of his answers. It appeared to me that his philosophy was that of "live and let live" and "don't rock the boat".

He said the incident occurred before lunch. He estimated it was about 9:00 a.m. He said he was trying to play cards and a correctional officer was teasing him. He thought the correctional officer was C.O. 2 John Turff and he so identified him from the book of photographs of correctional officers. I am satisfied that this was a misidentification. The officer he likely intended



C.O. 2 Samuel Curry



C.O. 2 John Turff

to identify was C.O. 2 Samuel Curry, who bore a strong resemblance to Turff.

St. James stated that he “got into an argument with the corridor man, and this officer, and he kept telling me if I didn’t shut up, something was going to happen. So they came up, Lieutenant Johnson, Dassy and him, and I can’t remember anybody else. They took me downstairs and pushed my arms up my back, punched me a few times, and I fell down in the elevator, and when I went over to the segregation cell they let me alone. That is about all the story.”

MR. MCRAE. Did they tell you why they were taking you out?

A. Well, it was over this argument that I had with him, that’s all.

Q. Did they tell you where they were taking you?

A. In the new building, I was going over to the cells on the new side.

Q. You were what?

A. I was going over to the cells on the new side.

Q. You mean segregation?

A. Segregation, disassociation.

Q. Disassociation. You knew you were going, were you told you were going there?

A. No, but I knew it.

Q. How did they take you over there?

A. I told you, they shoved my arm up behind my back, and led me down the stairs.

Q. This is immediately [after] you came out of 2 annex, and had your arms up around your back?

A. Yes.

Q. What happened as you went through the dome?

A. They said, the evidence, I was screaming. I might have, there was lawyers there. They took me down the other stairs, and punched me in the side.

Q. Who had you by the arm?

A. I don't know. Dassy and Curry were behind me. Your arms are around your back, you can't see that.

Q. Dassy and who?

A. Dassy and Turff, I guess it was.

Q. You said Curry, it was Mr. Turff? I am sorry, is that your evidence?

A. That's so. Curry was there too.

Q. I beg your pardon?

A. I don't know them all.

Q. Well, did Mr. Curry have anything to do with this?

A. I couldn't say. I can't place him.

Q. All right. So you went through the rotunda, the balcony and you say you were screaming?

A. Well, they said I was.

Q. Well were you?

A. Maybe. I couldn't say.

Q. I beg your pardon?

A. I am not sure whether I was or not.

Q. All right. So you went through the balcony around the rotunda and where did you go?

A. Down the stone steps through the other part into where the new wing is. There is an elevator. . . .

Q. Other than having your arm held up behind you as you have described was there any other force used on you?

A. Oh yes. I was punched five or six times.

Q. Where were you punched five or six —

A. On the side, the back, the ribs.

Q. And where did the punching take place?

A. I was going from the old side to the new side.

Q. You mean the tunnel?

A. In the tunnel, yes.

Q. Yes, all right. How did you make it down the stone steps from the landing outside —

A. They led me down with my arm behind my back.

Q. They had your arm behind your back?

A. Yes.

Q. Do you recall who had your arm up behind your back?

A. Dassy and somebody else.

THE COMMISSIONER. Was there any punching before you reached the tunnel?

A. I don't remember that, no.

MR. MCRAE. All right. Did you walk down the stairs?

A. (Witness nods in the affirmative)

St. James said that the punching in the tunnel took place at the foot of the stairs, which would mean the stairway from 7 and 8 landing to the basement tunnel leading to the new building.

MR. MCRAE. Okay, and who punched you?

A. I don't know. Whoever was with me.

Q. And who was with you?

A. I don't know who took me. I don't know who took me out. Dassy was one of them. He has already admitted it anyway.

Q. That's right. Who else? Was there anybody else? You said that Lieutenant Johnson didn't touch you?

A. No.

Q. Well ———

A. Turff was with him. He was the one that made the complaint in the first place.

Q. What did Turff do?

A. Curry ———

Q. Turff and Curry?

A. I don't know.

Q. You just mentioned Curry's name.

A. I can't place him, no.

Q. Okay. Was it Mr. Turff that was with you and Mr. Dassy and Lieutenant Johnson?

A. Yes.

Q. All right.

A. As far as I know.

Q. Okay, and what did Mr. Turff do?

A. I guess they all took a shot at me and punched me a few times.

Q. They all did?

A. Yes.

Q. Not Lieutenant Johnson?

A. No.

Although St. James said that there were three or four correctional officers with him in the tunnel, he seemed to be in some doubt in placing anyone there in addition to Dassy, Johnson, and "Turff". At times he added Curry and at other times he seemed to interchange Curry with Turff. Not only Dassy identified Curry, but also Robinson. As mentioned elsewhere, I am satisfied that it was Curry and not Turff who was present.

MR. MCRAE. And how many people took you along the tunnel?

A. There was three or four altogether.

Q. Okay. You went over into the new wing?

A. Yes.

Q. Did anything happen to you before you got to the elevator in the new wing?

A. Before I got on, after I got on I got pushed and fell on the floor.

Q. Did you see someone from the kitchen as you were getting on the elevator?

A. No.

Q. Before you got on the elevator?

A. (no response)

Q. I beg your pardon?

A. As I was coming through the tunnel?

Q. Yes?

A. Yes. Somebody took a shot at my stomach.

Q. Where did this person come from?

A. I don't know.

Q. Was this a correctional officer?

A. (Witness nods in the affirmative)

THE REPORTER. You will have to answer, sir, yes or no.

Q. This was a correctional officer?

A. Yes ———

Q. One that had you in custody at that time?

A. No.

Q. This was somebody else?

A. Yes.

Q. What was he doing?

A. I don't know.

Q. How did he happen to get into the act?

A. I don't know.

Q. Where did he come from?

A. From the kitchen.

Q. Someone from the kitchen?

A. Yes.

Q. Could you identify him?

A. No.

Q. He took a shot at your stomach?

A. Yes.

Q. What does that mean?

A. He just punched me in the stomach.

Q. He punched you in the stomach?

A. Yes.

Q. With what, his fist?

A. With his fist.

Q. How many times, just once?

A. Just once.

St. James said no charge was laid against him and he was let out of segregation the next morning. He said he did not have a hearing and he did not make a complaint about this matter to anyone at the Toronto Jail, but spoke to the Commission investigators who came to see him. After he had been released from segregation the next morning, St. James stated, he was returned to 2 annex.

Once again, it is most unfortunate that no record is kept of a misconduct charge and the disposition of it with reference to people who are put into segregation. In all cases where an inmate is taken to segregation a charge sheet should be made out and then the disposition of the charge would be

on permanent record.

St. James was asked about his injuries and said he had a few bruises on his body, on the right side, the stomach and the back. He did not need medical treatment.

He was further questioned about the incident that day.

MR. MCRAE. Is there anything else that you could tell us about this incident involving yourself?

A. No, there is nothing more I could tell you.

MR. MCRAE. Mr. Commissioner, you may wonder why we don't have the Misconduct Report but we haven't been able to find any. . . . I don't believe that there was a Misconduct Report filed. . . .

THE COMMISSIONER. And when you were in segregation were you transferred out of your jail blues into baby dolls?

A. Yes.

Q. And when you were released the next morning who was it that released you, do you know?

A. Lieutenant Johnson.

Q. Yes, and did he have some conversation with you and tell you why you were being released?

A. No, not that I know of, no.

Q. Was there any discussion about your behaving, getting into arguments with correctional officers?

A. Yes.

Q. With Lieutenant Johnson?

A. Yes.

Q. And was it on the basis of that that you were released?

A. I imagine so.

Q. Yes. What was the state of your health at this time generally?

A. It was pretty good. I do suffer from bronchial asthma at times.

Q. Well, was this one of the times that you were not suffering from asthma?

A. Yes.

Q. Was there any complaint by you during this episode about your health generally?

A. No, there wasn't.

Mr. Salem, acting on behalf of Dassy, waived any examination of St. James. Mr. Carter then questioned St. James, who stated that, although this was not the only time he was taken to segregation, he had not been struck on any other occasion.

Commission counsel, Mr. McRae, recorded some of the times that St. James was in segregation in May. This was prior to Robinson's evidence anent the month of June and prior to the filing of the complete attendance record of the correctional officers, also for the month of June.

Further questions were asked by the Commissioner in an attempt to clarify the matter of the segregation of St. James.

THE COMMISSIONER. Yes, I just want to ask Mr. St. James a few questions.

On any of these occasions in May, had you requested of your volition to go into the segregation area?

A. No, sir.

Q. Was it thought that you might be quieter there than in some of the other areas of the jail?

A. Probably.

Q. Because it is usual that if someone goes into segregation there is a Misconduct Report? That's correct, isn't it?

A. Yes.

Q. And, apparently, there is no Misconduct Report located in connection with your attendance in segregation. With reference to inmates that have been called as witnesses, I have noticed that the older . . . inmates usually don't pose discipline problems. I was just wondering how it was that you were so often in segregation in the month of May 1974?

A. I don't know.

Q. You have no explanation that can assist us?

A. No.

As mentioned above, I obtained the impression that St. James was holding back on his evidence. From the manner in which he answered questions as well as from his demeanour and attitude in the witness box it appeared that he was purposely minimizing the event.

It had been indicated on other occasions that inmates would be taken out of their corridors for a time, in order to let them cool down, and then would be returned without charges being laid. This may have been the rationale behind the removal of St. James. I am strongly of the opinion that, if St. James was posing a problem and was not being transferred to another corridor but was being put into segregation, there should have been a charge, a Misconduct Report, and a hearing, particularly so that the matter would come to the attention of the Superintendent or Deputy Superintendent. If it is considered advantageous to both the inmate and the jail that no charge be laid, there should be, at least in every such case where an inmate is taken to segregation, a formal and written report made to the Superintendent, so that he might investigate. These should be reviewed from time to time by the proposed Toronto Jail Council so as to get a reading on the frequency of such use and also the possible underlying causes.

EVIDENCE OF STANLEY FRANK JOHNSON

C.O. 5 Johnson stated that he recalled the incident in May 1974 involving St. James, when he called upon Gary Dassy for assistance.

MR. MCRAE. I understand [St. James] was an inmate that caused considerable problems at the institution?

- A. Mr. St. James caused more problems to the inmate population —
- Q. Caused more problems to other inmates?
- A. Yes, the inmate population, and disruption of other inmates. This is why he has to be removed all the time. We know Mr. St. James might be a little bit mentally off balance; therefore, we don't charge him for this. We merely take him off to segregation, and put him back in the corridor the next morning.
- Q. He would spend quite a few nights in segregation?
- A. Yes, sir.
- Q. And the days in the corridor, he is not under charge?
- A. That's right, sir.

Despite this explanation by Johnson, which may well have been valid, the observations made above as to the necessity for a hearing by the Superintendent or Deputy Superintendent still remain as a positive recommendation.

- Q. Well, the day that you called for Mr. Dassy's assistance, what sort of report of trouble did you have?
- A. Mostly shouting by St. James. He refused to come out of the corridor. Mr. Dassy came and brought him downstairs from 2 annex.
- Q. You went in the tea room?
- A. Mr. Dassy was on 3 and 4 corridor at that time.
- Q. You picked him up on 3 or 4 corridor?
- A. That's right.
- Q. And Mr. Dassy got him out of the cell?
- A. That's right.
- Q. How did you proceed to get him out of the cell?
- A. Mr. Dassy had him by the arm — armlock.
- Q. Right.
- A. And coming down from the annex, I said, "It's okay, you can let him go," but when we got down to the dome area, St. James starts to act up again. . . . When we approached the dome area there was quite a few people in the dome area — maybe lawyers, or probation officers. Mr. St. James started to holler and act up again. . . . Mr. St. James started to act up in the dome area. I'm sure that Mr. Dassy took him by the arm and propelled him along, not for any brute force, or anything, but just propelled him along the corridor to the segregation area. . . .
- Q. Did anything else happen as you got to the bottom of the stairs?
- A. Nothing.
- Q. What about going through the tunnel? . . . Did anything else happen?
- A. No, that's all.
- Q. Any blows aimed at Mr. St. James?
- A. No blows struck at all.
- Q. What happened when you got to B landing — the segregation landing?
- A. He was just stripped and put in protective clothing, and put in segregation. There was a notation that he was to be removed in the morning. We would tell the officers there was no charge, but to remove him in the morning.

Johnson was most helpful later in the inquiry, particularly in connection

with training. When he was made the Training Officer, this became his sole duty. My impression is that he increased his understanding during the inquiry of the proper conduct for both senior and line correctional officers towards inmates in accordance with the Ministry policy. I accordingly believe that he will be able to properly instruct correctional officers in this regard.

It is therefore with great reluctance that I must cast doubt on his evidence on April 14, 1975, about the Malayny incident as well as the St. James incident. I was obliged to conclude that his evidence was not convincing, and, further, I had the distinct impression that he was "covering up". As stated, it is with great reluctance that I am obliged to make these observations and findings, particularly in view of Johnson's long service and the fact that he went out of his way to co-operate with and assist the Commission later, particularly in the area of training.

Johnson stated that there were no other correctional officers on the escort of St. James other than Dassy and himself.

MR. MCRAE. Mr. St. James was not charged?

A. No. There were several times he went to segregation, and there was never any charge. It was just disrupting other inmates. It was merely to get him out of the corridor overnight.

Q. Mr. Dassy has given evidence, and he said that he knew that St. James was —

A. Mr. Dassy has given a lot of evidence.

Q. Well, I have to put what he said to you for your comments on it. That is my responsibility. He said you got him from, I think, the tea room when St. James was causing trouble, and he said words to that effect. . . . You and he went up to 2 annex. I believe there was another officer present. The guard on duty was Mr. Stevens. Do you recall that?

A. Yes, he was on duty at 2 annex.

Q. All he did was open the door and let you in?

A. That's correct.

Q. Anything else?

A. No other officer was involved in the incident.

Q. What about Mr. Curry?

A. I don't recall Mr. Curry being there as an officer.

Q. I believe Mr. Dassy said Mr. Curry was there as well, although, he took physical custody of St. James.

A. That's correct.

Q. You just don't recall Mr. Curry being there. Was he part of the escort?

A. No, he was not.

Q. You are sure of that?

A. I am sure of that.

Q. Mr. Dassy said when he got to 2 annex he took his tie off anticipating trouble. Do you remember that?

A. I can't recall that, sir.

Dassy's evidence was then put to Johnson and he said it was correct that

on the stairway leading to the basement he told Dassy to let go of St. James, but his motive for doing so was that St. James was quiet at the time and there was no need to restrain him any longer. This is a reasonable explanation and Johnson would be in a better position to know what he had in the back of his mind than would Dassy. In the absence of any other information on the matter, I accept the explanation of Johnson on this point.

Dassy's evidence concerning "rehabilitation" was put to Johnson. Johnson denied that Dassy hit or kicked St. James as Dassy himself said he had done. Once again, it is difficult to understand why Dassy would admit to a physical assault against his own interest if this did not occur. Of course, it ties in with his allegation that Johnson ordered the "rehabilitation" and that he (Dassy) complied.

Since St. James alleges that he was struck at the bottom of the stairway and, as mentioned earlier, tried to minimize the matter, and since Dassy made an admission against his own interest, I find that Dassy did, in fact, assault St. James at the bottom of the stairway and that this was in the presence of Johnson, who admitted to being present while Dassy was escorting St. James.

Does it make very much difference, then, whether or not Johnson said that St. James was in need of rehabilitation? If he used such words, did they in fact have the meaning and connotation that Dassy read into them? Having found that Dassy struck St. James in the presence of Johnson I conclude that, whether or not the words were used, Dassy must have felt that Johnson would not disapprove of his striking St. James.

As for whether Johnson intended to prompt Dassy to strike St. James by using the "rehabilitation" words, St. James did not mention that the words were used and there is only the evidence of Dassy against Johnson. I do not think it would be fair to attribute to Johnson both the words and the meaning that Dassy put to them. St. James was posing a behavioural problem, and, according to the evidence, considerable trouble was encountered with him. It may be that words similar to "he needs rehabilitation" were used by Johnson in an innocent manner and that therefore he does not recall using them. Dassy's own evidence on this is contradictory. At first he said that Johnson had stated, "All right, now rehabilitate him," and later he changed this to, "He needs to be rehabilitated."

MR. MCRAE. Did Mr. Dassy hit St. James as he described?

A. No.

Q. Did he kick him?

A. Not in my presence, sir.

Q. This is right at the bottom of the stairs?

A. This could be another time, but not in my presence.

Q. Not on the day you requested his assistance to take St. James to segregation?

A. That's Dassy's story, not mine.

Q. I know it's Dassy's story, but I am just asking you for your version.

A. You have seen St. James, sir, and you probably know he may be a little mentally unstable, and I don't think any of the guards in the jail would do this to him, regardless of how provoked he was.

Johnson was questioned further about whether Curry was present. His evidence this time was a little weaker than that earlier quoted.

Q. Was Mr. Curry present?

A. I don't recall Mr. Curry being there.

Q. You can't say whether Mr. Curry was there or not?

A. I can't honestly say Mr. Curry was there.

Q. Mr. Dassy described Mr. Curry as using physical force.

A. Mr. Dassy has named a lot of officers. You have to take it for what it's worth.

Johnson was specifically questioned about Dassy's statement that "rehabilitation" had a particular connotation and that Johnson had discussed this matter with Dassy.

Q. Did you have such a conversation with Mr. Dassy at any time?

A. Not the way it is put there, no, sir.

Q. Would you care to elaborate and tell us what kind of conversation you had —

A. Because of the simple reason that . . . with all new officers coming in there, I was acting as liaison officer for their training program. It was my duty to have a conversation with them in relation to their training program.

Q. Did you ever have any conversation with Mr. Dassy or any other new correctional officer wherein you advised that they [inmates] be assaulted or struck if they needed rehabilitating?

A. No, we don't advise anybody to assault any inmate, sir.

Q. No.

A. Neither myself or anybody else in the institution.

Q. What sort of instructions do you normally give a new correctional officer with respect to using violence on inmates?

A. No, not — minimum force at all times to restrain only.

Q. Right.

A. No violence whatsoever. Minimum force to restrain a man, or the necessary force, and that is all —

Q. Mr. Dassy went on at some length saying you told him if anybody gives him any lip, you told him he should drop the inmate, hit him hard enough to knock him down. That is not so, either?

A. That is not so.

Q. Do you have a set sort of lecture or set of instructions?

A. It wasn't lectures at all. Lessons from the Guelph Training School and I just help them with them, that is all.

Q. I see. You coached them.

A. That is right.

Q. In their correspondence lessons?

A. In their correspondence lessons.

Q. Were you instructed to do that by the Superintendent or senior officers?

A. By the Superintendent, yes.

Q. That is part of your sort of standing orders, was it?

A. Well, actually all senior staff instruct them. But my main liaison was to make sure they got the lessons and got them back in.

It was later that Johnson was made Training Officer and was not just in charge of overseeing the correspondence lessons. In fact, the correspondence course was discontinued.

Mr. McRae concluded his questioning of Johnson.

Q. Do you recollect – did anything else untoward happen as you were going to the segregation with Mr. St. James that day?

A. Nothing any more than I have told you, sir.

Q. Right. Mr. St. James told us when you got on the elevator he got punched a few times and knocked down?

A. That is quite possible. Mr. St. James says this all the time.

THE COMMISSIONER. Well, did it happen at all?

A. It did not happen, sir.

Q. Other than the come-along hold that Mr. Dassy had, no violence was necessary or used on St. James?

A. None was necessary or used. The armlock that Mr. Dassy had on him was just sufficient to propel him along. Even Mr. Dassy at that time was not using unnecessary force.

Johnson was questioned by the Commissioner with reference to Dassy's possible motive for implicating himself but was unable to assist in this regard.

From other evidence, it appears Johnson would give more latitude to line correctional officers than some of the other senior officers. If the line officers knew this, would they more readily, then, take stronger action against an inmate in the presence of Johnson than they would in the presence of someone else, say, C.O. 4 Robert Nuttall? Would they be more careful with Nuttall to make sure that the action they took was really justified, whereas they might not draw such a fine distinction in the presence of Johnson? I am inclined to think that the correctional officers would react differently in the presence of Nuttall than they would in the presence of Johnson and this may reflect Johnson's attitude towards the disciplining of inmates. It may also have some bearing on his evidence in connection with the Malayny incident as well as the St. James incident.

Johnson was further questioned by the Commissioner as to the reference to "rehabilitation".

THE COMMISSIONER. Well, counsel read to you some evidence of Mr. Dassy's in which there was a reference to rehabilitation?

A. Yes, sir.

Q. Did you ever use the expression or words in discussions with Mr. Dowhey at all, "rehabilitation"?

A. Not with Mr. Dowhey, sir, no.

Q. I am sorry, I meant Mr. Dassy.

A. Might have at some time, yes, sir, but the rehabilitation I was referring to

was treatment and training; certainly not physical therapy.

Q. Do you recall in what circumstances you had used the word in conversation with Mr. Dassy?

A. No, sir, not offhand, no. I might have used it several times but I can't recall any specific incident.

Q. Could you give any reason why you think Mr. Dassy might have misinterpreted your remarks about rehabilitation?

A. It is quite possible because I run a good ship, a disciplined ship, and I am a disciplinarian.

Q. Yes.

A. It is quite possible to say, yes, we don't tolerate too much abuse from inmates.

Q. Might you have used the word "rehabilitation" in that connection?

A. No, sir.

Q. With Mr. Dassy?

A. No, sir.

If there was any misunderstanding as to the term "rehabilitation", even if used by a senior officer or training officer in a jocular manner, I feel strongly that steps should be taken to ensure that the term is not abused and is not given a secondary meaning referable solely to discipline.

Mr. Bryant, in cross-examination of Johnson on St. James, questioned his credibility in the following manner.

Q. . . . Now relating to this incident involving St. James . . . I gather that you agree with Mr. Dassy on almost every aspect until you get to the top of the stairs leading down to the tunnel; that you agree that you went up to the cell, took him out of the cell, that you followed the route that Mr. Dassy said?

A. That is correct.

Q. And you agree with the route?

A. Yes.

Q. And that he had an armlock on him and you agree about that?

A. Yes.

Q. And you took him through the dome area until you got to the top of the stairs? Right?

A. (nods affirmatively)

Q. Now if this incident, as you have described it from then on, is all that took place, why has this incident cropped up?

A. I have no idea, sir.

Q. I mean why would Mr. Dassy remember this particular one incident, as you have described it, when he must have done that a thousand times?

A. Mr. Dassy has remembered more in four months than I have in 14 years on the job, sir.

Q. Well, the two of you agree on what happened until you got to the top of the stairs.

A. I agree on the truth, sir.

Q. Yes.

A. Not the fabricated evidence or anything. What Mr. Dassy said, that is his own business. What happened, I agree with.

Q. Right. But does it not seem strange to you, sir, that he could have remembered so much about what the two of you agree upon and then all of a sudden you part ways when the incident was nothing more than what you described it? . . . I gather, then, it would be fair to say that you just cannot recall that Mr. Curry, I believe his name was, was there?

A. That is right.

Q. You don't remember?

A. I don't recall Mr. Curry being there, sir.

Q. He might have been?

A. He might have been, but I don't recall him being there.

Q. It is fair to say as well, then, that if there had been any blows struck you were always in a position to see them?

A. Yes, sir.

Q. As far as this particular incident was concerned?

A. Yes, sir.

Johnson indicated to Mr. Carter that he was "staff training officer" as of October 4, 1974. He said, "I am relieved of my lieutenancy for staff training as of October 4th."

There had been no appointment for a staff training officer, as such, prior to October 4, 1974, at the Toronto Jail.

If one were using the army as a parallel, there might be some suspicion that, in addition to Johnson having the necessary capabilities for staff training, he was better suited for that than for the job of C.O. 5 in charge of a shift. There was no evidence that Johnson was transferred because of incompetence or misconduct, such as allowing excessive use of force on the part of line officers.

EVIDENCE OF LLOYD LEWELLINGTON ROBINSON

This correctional officer was 36 at the time of giving evidence on April 15, 1975. He was born in Guyana, was 5'8½" in height, weighed 175 pounds, and had been employed at the Toronto Jail since February 1967. At the time of giving evidence he held the rank of C.O. 2. He had been a police officer in Guyana for a little over eight years. He said he did not have any training as a correctional officer. When he commenced work at the Toronto Jail it was operated by Metropolitan Toronto. Because of his experience as a policeman in Guyana, it was considered unnecessary for him to take additional training.

He stated that he took a one-week management course at the Ontario Correctional Institute in Brampton in December 1974. He had Grade XI education in Guyana which was complete high school. He said he had been studying a home course in literature, history, and human behaviour through a correspondence school in Toronto known as United College. He had

assisted in the training of new officers at the Toronto Jail and in addition to his normal work week of 40 hours he did approximately 60 hours a month of overtime.

As for injuries, he said that he sustained a superficial bite on the wrist from the same inmate who bit off C.O. 4 McKay's finger. He said he also sustained a sprained ankle as a result of sliding on some butter that had been left on a stairway.

Robinson said that he knew St. James and he was able to identify him from a photograph.

Robinson said he recalled an incident in 1974 when St. James was being escorted through the tunnel in the old jail. He agreed that he was being escorted by Dassy and Johnson.

MR. MCRAE. Do you remember who else was escorting?

A. If I recall, Mr. Curry was there too.

Q. Mr. Curry was there too?

A. Yes.

I consider Robinson's evidence conclusive that Johnson was being accompanied by both Dassy and Curry as alleged by Dassy. It also confirms the evidence of St. James that in addition to Johnson and Dassy there was another correctional officer. At times he had indicated that this was Turff and at other times that it was Curry.

I therefore cannot accept the evidence of Johnson that the only one accompanying him from the jail staff was Dassy.

Robinson thought the incident occurred in June and not in May. He stated, "My reason for really thinking about it is that it was published according to Dassy's statement that he gave that I supposedly kicked St. James in the stomach, or something like this, and so this is why I paid so much attention to it, and I can recall it somewhere in June. . . . It should be some time around the month of June. I don't know whether I'm correct or not."

Robinson said that he was working in the new building at the time. He came from 3C, went to the kitchen, and got his lunch. He said this consisted of a plate of food and a bowl of dessert. He was on his way through the basement tunnel to the main lunchroom, which is in the old building and has been referred to as the tea room.

Robinson said that he was half way through the tunnel when he met St. James and his escort.

Robinson said that he had to discipline St. James two or three times and indicated that he did this just by escorting him to the segregation cells and therefore it was not "in the sense of disciplining him" – just removing him from the area for his own protection. He said these times could have been before or after the reported incident.

Robinson admitted that Dassy's statement that he (Robinson) passed them in the tunnel going from the new building to the old building with a meal was correct and that it was also correct that St. James was being escorted by Dassy, Curry and Johnson. But he said that at no time did he strike St. James or talk to him.

Q. What happened as you came up to him?

A. Nothing. I just passed beside and went on my way.

Q. You did not hit the inmate?

A. No, not at all, sir.

Q. Did you say anything to him like, "Not you again, St. James"?

A. No.

Robinson said that he had never had a falling out with Dassy and "there was no friction between us at all". He did not know why Dassy would want to implicate him or why he would think up an unusual incident such as this one.

On the weight of evidence and on the probabilities of the matter, I believe that Robinson did strike St. James as alleged by both St. James and Dassy. As for the amount of force that was used, I do not consider that it was great. Throughout the inquiry, there were many allegations of inmates being punched in the stomach. This seems to have been a favourite target, maybe because it seldom left any visible marks and maybe because the discomfort was often only temporary. Certainly, in contact sports athletes are struck frequently in the stomach and rarely is there any injury of consequence.

Again, having found that there was this striking, even though it was not a severe blow, the fact that Robinson did strike St. James in the presence of a senior officer, even if it was only in jest, tends to be an indictment of that senior officer. Again, I ask the question, would Robinson have done this if the escorting officer had been, say, Nuttall?

Mr. Carter indicated that Curry was away from the jail, either for days off or vacation, for most of the month of May. First Mr. Carter and then the Commissioner questioned Robinson as to the month of June and also as to seeing Curry.

MR. CARTER. Now, do you have any firm or positive recollection of Mr. Curry being there?

A. Yes, sir, I have seen him there.

Q. On this particular occasion?

A. Yes.

Q. You think this was in June?

A. I think it was in June. I may be wrong. I'm not quite sure of the date.

THE COMMISSIONER. Is there any other reason why you would think it was in June?

A. Well, my reason for really thinking it is around June is because of the statements made by Mr. Dassy and at the time of reading it in the papers, I thought of it, and I says: I did remember him being escorted to the segregation cells. This is why I place it in June, but I may be wrong on my date. I'm not quite sure.

It must have been some time in September or October that Robinson read about the allegation of Dassy in the *Toronto Star*. The important thing is that it did come to his attention first by an article in the *Star* in which the incident was referred to, and then no doubt he thought about it and placed it in the month of June.

EVIDENCE OF JOHN TERENCE TURFF

C.O. 2 Turff was born in London, England, and was 29 at the time of giving evidence, having been on the staff of the Toronto Jail for five years.

Turff was 6' tall, weighed 185 pounds, and bore a rather strong resemblance to a former correctional officer, Samuel Curry. This may account for St. James having been confused at times between Turff and Curry.

The evidence of St. James was reviewed by Mr. McRae for the benefit of Turff. Turff said he had not been in the annex for two years prior to giving evidence and that he could not be the officer referred to by St. James.

Turff gave evidence in an exemplary manner. I am satisfied that he was not present. Any mention of his name by St. James was a result of his similarity to Curry.

EVIDENCE OF SAMUEL CURRY

Like C.O. 2 Turff, whom he resembled, Curry was born in England, but he was 36 – some seven years older. Curry joined the Ministry in November 1971, and worked as a correctional officer at the Toronto Jail from that time until August 23, 1974, when he resigned to take other employment. He spent some years in the British armed forces, and at the time of giving evidence had lived in Canada for seven years. He said he had “the regular on-the-job training given to all new officers, and I also did the Ministry correspondence course, and I did the in-residence three-week course at the Guelph Correctional Centre.”

Questioned by Mr. McRae, Curry said he did not know whether he knew St. James or not. He said he did know Dassy, Johnson, and Robinson. He denied involvement in the St. James episode.

MR. MCRAE. And can you tell us anything about an incident in which you were alleged to have been involved some time in May 1974, or possibly in June – June was suggested this morning by Mr. Robinson – in any event, involving an inmate whose photograph I have just shown you?

A. No, sir, I can't really remember the name. I can't remember any incident. I think if an incident did occur, I think I would have remembered some detail of it. It is my recollection in May of '74, I was taking my annual three-week vacation, and I believe for the greater part of May – the last three weeks – I was in England on vacation and not in Toronto at all.

The records indicated that Curry was on vacation from May 11 to May 31. Therefore, if he was involved, the incident must have occurred earlier in May or, as Robinson indicated, in June.

THE COMMISSIONER. Mr. Robinson may well be correct when he says the

incident occurred in June.

MR. MCRAE. We can't place the time at all, really. . . . Do you know Mr. Robinson?

A. Yes, sir.

Q. Do you know him well?

A. Fairly well, sir.

Q. He knows you, I presume?

A. Yes, sir.

Mr. McRae then reviewed the evidence of Dassy in which it was stated that Curry was present. Curry continued his denial.

Q. You say you have no recollection of that happening?

A. That's right, sir, I have no recollection of this incident, or any incident with anybody called St. James.

Q. Is it the kind of thing that you would forget if it did happen?

A. I hardly think I would forget everything, sir. I might forget the dates, on a particular occasion, a morning or afternoon, I might forget the time. I'm sure I would remember something of it.

Q. You have no recollection at all?

A. No, sir.

Mr. McRae continued to review the evidence of Dassy, indicating that after Johnson stated that St. James "needs to be rehabilitated" Curry and Dassy punched St. James for about three minutes, and that the two of them then kicked St. James with the insteps of their boots.

Q. Then, he describes, as he and the person he describes as you were escorting St. James through the tunnel towards the new building . . . correctional officer Lloyd Robinson came along with a meal in his hand and he describes correctional officer Lloyd Robinson as taking a punch at St. James as well and hitting him in the stomach. Now what is your evidence about that?

A. I have no recollection of being involved with any incident with St. James, any incident with Gary Dassy or any incident where we had to restrain an inmate.

Q. Mr. Robinson also identified you this morning?

A. Yes, I heard his evidence this morning.

Q. And he is someone who knows you well?

A. He knows me well, yes.

Q. Can you explain why he would identify you?

A. I can only presume that he had some confusion around the dates and probably also had some confusion around the people involved in some such incident.

THE COMMISSIONER. He may not have been confused about dates. His evidence may have been the correct evidence as to the month this occurred in.

A. I cannot add anything further to that.

There was then questioning on the similarity in appearance between Turff and Curry, with which Curry also agreed.

MR. MCRAE. Would Mr. Robinson be able to identify you and distinguish you from Mr. Turff?

A. I would think so, sir, yes.

THE COMMISSIONER. How about Mr. Dassy? Do you think he would know the difference between you and Mr. Turff?

A. It is possible that he would not, sir. I had very little contact with Mr. Dassy.

Q. Is there any third correctional officer that looks like both Mr. Turff and yourself?

A. No, sir, I don't believe so.

Although Curry indicated that Dassy might not know the difference between them, I am satisfied that Dassy did, and that he was not erroneously referring to Turff when he mentioned Curry.

MR. MCRAE. You just can't help us at all with respect to this incident?

A. I'm afraid not, sir. I don't remember any incident involved with any of the officers that you mentioned at all.

Q. You are able to say categorically then that it did not happen as far as you are concerned?

A. Yes, sir, I can say that.

Q. And you can't help us why Mr. Robinson would say you were there?

A. No, sir.

Q. Even though he was someone that was a particular friend of yours, within the institution and outside of it?

A. I think he would have absolutely no difficulty in distinguishing Mr. Turff and I.

Q. Did you have any problems with Mr. Dassy, why he would involve you if you were not the person?

A. I did not have any problems with him, sir. I had very limited contact with him. I rarely worked with him and I tended to keep away from him socially because of his general personality which I did not particularly like.

Q. But he did not have any grudge with you or anything like that?

A. Not that I am aware of, sir. . . .

THE COMMISSIONER. And what was your reason for not liking Dassy?

A. I think I disliked his personality more than the man, sir. He had some views which I don't altogether hold with, of the type which were generally called racist, and I did not particularly want to listen to this type of view expressed. He could have his own view but I did not see why he could take it out on us, so I tended, if I did take a break, there are two actual tea rooms which are separated by a short corridor in the old jail and if he was in one I would normally by choice use the other if space was available in the other.

Q. And do you think that those views that you have just indicated might have in any way affected his evidence against Mr. Robinson, who is black?

A. I can't say that for certain, sir, but the possibility exists in my mind that it is possible.

Having heard Dassy give evidence involving a number of people and also observing his reaction when other correctional officers gave evidence I do

not share Curry's opinion that Dassy would be any differently disposed towards correctional officers who were black than to correctional officers who were white. I do not think that the colour of the other correctional officers cited by Dassy had any bearing on his evidence.

Dassy may well have expressed contempt for some black officers but I think that equally he would have expressed contempt for other correctional officers who were not black. I therefore do not share Curry's views that Dassy was a racist, unless one would define the term as meaning any correctional officer other than Gary Dassy.

Curry stated that he probably had occasion to escort inmates in the presence of Johnson, but he did not recall Dassy also being present. In fact, his answer was, "I can't recall a single occasion when Mr. Dassy and I have been present escorting an inmate."

Curry was examined by Mr. Zifkin, one of Mr. Salem's assistants.

MR. ZIFKIN. It was my impression that on the basis of his evidence, Mr. St. James is a well-known inmate of the jail, and it seems to me that your evidence is really stating that . . . you don't know the face. It seems to me, my question is, you don't even know the name?

A. That is true, sir. If he is a frequent inmate in the Toronto Jail, I did not have any contact with him or any contact that would stick in my mind other than perhaps just the face.

Q. And the face does not stick in your mind?

A. No, sir.

Q. . . . were you familiar with the name at all?

A. No, sir.

Q. Nothing about the man at all?

A. Neither by name or reputation.

It was indicated that Curry would be recalled on the second phase of the inquiry. This was referable to matters other than the specific allegations of the use of unnecessary force. However, when he was contacted later he said he did not wish to return. As he was no longer in the employ of the Ministry, the matter of his attendance was not pressed.

ST. JAMES SUMMARY

I accept the positive identification of Dassy and Robinson that Curry was one of the officers escorting St. James. This is further reinforced by St. James's reference to Curry. Having found that Curry was present, I am of the opinion that there was a mistake when the month was mentioned as being May rather than June. I consider the error in month secondary in importance to the identification of Curry.

I find that St. James was subjected to unnecessary force by Dassy and

Curry in the presence of C.O. 5 Johnson, a senior officer. Johnson, if he did not encourage such assault, failed to prevent it, and neglected to stop it promptly once it was taking place. There is no suggestion by anyone that Johnson himself ever struck St. James.

Further, I find that, while being escorted in the basement tunnel by Johnson, Dassy, and Curry, St. James was also assaulted by Robinson.

The Somerton Allegation

"... he had a crushed foot in a mining accident and that is why he was wearing a brace." (C.O. 2 Cyril Boakes)

"... and then I saw Dassy kick Somerton and I saw the iron come loose off his leg." (C.O. 2 Cyril Boakes)

"Dassy said if you cross me again you will be wearing one on the other leg, meaning a brace." (Nathaniel Somerton)

"If I was making \$100,000 a year and didn't have to depend on working, I wouldn't have to lie." (Gary Dassy)

"... it's something I find difficult to contend with, is this dumb insolence." (C.O. 2 William Stafford, commenting on inmate David Machan)

EVIDENCE OF GARY DASSY

Dassy referred to an incident that he said occurred in July 1974 and involved an inmate with a leg brace. The inmate was Nathaniel Somerton and the incident occurred on July 23, 1974, according to the Misconduct Report.

Dassy said that C.O. 2 William Stafford and he were in the vicinity of the rotunda at 7 and 8 landing and that C.O. 2 Cyril Boakes had gone over to

2B to get Somerton. "Well, this inmate was in the segregation cell for throwing a meal. I do not recall if it was at a guard or another inmate."

According to another Misconduct Report on Somerton, he was in segregation for refusing to make his bed. The reporting correctional officer at the time of the incident, on July 22, was C.O. 5 James Swan and the description of the misconduct was "neglect performing work or duty assigned to him" and the details: "During the course of my inspection I found the above inmate's cell filthy and the bed unmade. I ordered him to get the bed made up and the cell cleaned. He threw the blankets together at the top of the bed and said, 'There does that suit you.' I told him it didn't and I was transferring him to the old building. He then said, 'No, you're not, you can put me in the hole.'"

The investigation conducted in connection with the July 22 misconduct, was also by Swan and I have commented elsewhere that it is inadvisable for the investigation to be conducted by the same senior correctional officer who has either witnessed or laid the charge of misconduct. In the investigation, Swan had stated: "I asked Somerton why he preferred segregation and he said, 'I'll be out in the morning as I go to court.' This inmate was quite hostile while still in the corridor."

Somerton exhibited hostility during the giving of his testimony before the Commission to a much greater extent than most inmate witnesses. At all times counsel and the Commission attempted to treat all witnesses with proper courtesy and usually this was returned in kind. In fact, it was an object lesson, concerning the hostility that was alleged to have been exhibited by many inmates towards correctional officers, that it might never have occurred had the inmates been treated while in custody with something approaching the consideration they received from counsel during the inquiry.

This is mentioned because, although Somerton was treated in the same manner as other witnesses, his reaction to questioning was much stronger and more resentful, and at times it was hostile. I am therefore prepared to believe that his attitude in the jail surroundings could have been even more hostile.

The two Misconduct Reports were heard by Mr. Taylor on the morning of July 24. In part 3 of the first report it was indicated that Somerton denied any misconduct. He was quoted as saying, "I didn't refuse. I just couldn't do it because of my leg." The finding by Mr. Taylor was that Somerton was guilty of the misconduct and Somerton was admonished. The comment by Mr. Taylor was: "Does have a bad leg which should not prevent him from keeping his cell clean."

Since on the second charge Somerton was given indefinite segregation (not to exceed 10 days), the admonishment (for the first charge) cannot be criticized as being too lenient. No doubt both offences were taken into account when punishment was decided by Mr. Taylor.

Returning to Dassy's evidence, he stated, "The next thing I can recall is Boakes saying that this inmate had attacked him at the top of the stairs."

Dassy was referring to the famous stairway leading from the tunnel passage between the old and the new buildings up to 7 and 8 landing on the first floor and just outside the rotunda area.

MR. BYNOE. So that as a result of the call by Boakes you turned?

A. Yes, sir.

Q. Now what did you see?

A. I seen this tall inmate, I believe he had long, blonde hair, and Boakes said he [the inmate] had taken a swing at him.

The above is of interest because there was evidence that it was Dassy who told Boakes that Somerton had "swung" at Boakes.

Dassy identified a photograph of Somerton, as he could not recall him by name.

Dassy was asked about his reaction to the information that he said was conveyed to him by Boakes.

A. I grabbed him from behind.

Q. Grabbed whom, please?

A. Grabbed [Somerton]. I put my knee in the small of his back, grabbed his hair with my hand and put my knee into the small of his back.

From the evidence given in connection with other incidents, it seemed that Dassy reacted with characteristic speed in physically contacting the inmate, particularly when other correctional officers were about.

Q. Did the inmate, Somerton, deny that he had taken a swing at the Correctional Officer Boakes?

A. No, sir.

Q. All right.

A. Then Stafford started to slap him in the face.

Q. With what?

A. With his hand, open hand.

Q. Open hand?

A. Yes, sir.

Q. Anything else?

A. So after that he still would not apologize.

Q. How many slaps?

A. Four, five slaps, sir. Real heavy, it would leave an imprint on a person's face with those slaps.

Q. A fair degree of force, that is what you are indicating?

A. Yes.

Q. Did he punch the inmate?

A. Not this time.

Dassy then stated that Somerton was brought into the rotunda area between the sergeants' office and Legal Aid, and this was by Boakes, Stafford, and himself.

Q. Was anybody holding Somerton?

A. I was still holding on to his hair.

Q. And the other two officers, could you see —

A. They were right behind me.

Although elsewhere it has been indicated that inmates, particularly those with long hair, were at times held by the hair or propelled or moved by the hair, this cannot be accepted as an alternative to a proper come-along hold. Even before the come-along hold is used the inmate should be told to move on his own momentum. Of course, there are occasions when it is necessary to restrain an inmate and time might be of the essence. It might not be practical to start by issuing an order, or to weigh with nicety which part of the body should be seized.

One of the reasons for the above suggestion is that grabbing an inmate by the hair is a demeaning act. It is unprofessional and can create stronger resentment than the application of an approved come-along hold.

Dassy said that he was the only one holding Somerton at this time and that after Somerton had been brought to the rotunda he was again asked to apologize.

Dassy stated that Stafford and Boakes each struck a similar number of blows against Somerton. Both Boakes and Stafford in their own evidence denied striking Somerton.

The procedure that should have been adopted, if Somerton did swing at Boakes, was to place Somerton on charge and report the matter to a senior officer who would decide whether Somerton should be placed in segregation pending a hearing or dealt with in some other way. Force should only have been resorted to for the purpose of repelling any further attack or threatened attack.

It should be noted that Somerton had a severe injury to one leg, the result of a mining accident, which made that leg shorter than the other and required the use of a steel brace.

Dassy stated that Somerton was again asked to apologize. This was when they were in the rotunda near the Legal Aid office or the sergeants' office.

MR. BYNOE. By whom?

A. By myself and Stafford and he wouldn't. So we started to punch him.

Q. Who started to punch him?

A. All three of us, Mr. Boakes, Mr. Stafford, and myself.

Q. How many blows were struck firstly by you?

A. I have no idea, sir.

Q. You have no idea at all?

A. Three, four, maybe five.

Dassy said that, in addition, a similar number of blows were struck by Stafford and also by Boakes and at about this time C.O. 4 George Wilson came on the scene. "He came around to where we were. We stopped what we were doing. He asked us what was going on. . . . We told him that Somerton had attacked Mr. Boakes and that we had asked him to apologize and he refused to apologize and he could see what we were doing, he could see us . . . punching Somerton . . ."

Q. When you observed him, did you stop punching?

A. No, sir.

Q. Did Stafford stop?

A. No, sir.

Q. Did Boakes stop?

A. No, sir.

Q. What happened then?

A. After we told him what he was being hit for, Wilson then hit him himself.

Q. How and how many times?

A. I have no idea because that is when the kicking started, sir, and there were four of us involved in it.

Q. Right. Now, did you see Sergeant Wilson hit the inmate?

A. Yes, I did, sir.

Q. With what?

A. With his fist, sir.

Q. Where?

A. In the stomach, sir.

Q. Now, then, you indicated that some kicking started?

A. Yes, sir.

Q. Who started the kicking?

A. I don't recall, sir, who started kicking. I did not kick the inmate – or this inmate.

Q. You did not kick that inmate?

A. No, I did not, sir.

Q. That would only leave, then, Stafford, Boakes, and Wilson?

A. Yes, sir.

Q. Did you see any one of those kick him?

A. Well, I was not looking at their feet, sir, but somebody must have kicked him because he had a steel leg brace which came off. . . . They had to kick him because I can't see how the leg brace would come off any other way.

Q. You said you could not see how the leg brace could come off in any other fashion, is that right?

A. No, sir.

Q. I want to ask you this. Do you specifically recall anyone actually kicking the man? Did you see it?

A. No, I did not see it, sir, because it was all in close punching and that.

With reference to Dassy's implication of Wilson, this has to be viewed in the light of a strong antipathy between Dassy and nurse Jane Mannerholm, on the one hand, and Wilson, on the other. This arose out of alleged familiarity on the part of Wilson with Miss Mannerholm, which was denied by Wilson.

If the allegations of Dassy were correct with reference to the use of force on Somerton because he would not apologize, then this was inexcusable on the part of Dassy, and if Boakes and Stafford were parties to this then they, too, were completely unjustified, although in their evidence they both denied using any force on Somerton.

More serious was Dassy's allegation that C.O. 4 George Wilson also used force on Somerton. If this was true it was a bad example to the line officers and would encourage similar conduct on their part, directly against the

Ministry directives and the standing orders in the jail.

The matter is even more serious than the allegation that Dassy made in the St. James incident, that C.O. 5 Stanley Johnson had encouraged correctional officers to use force by advising that St. James was to be "rehabilitated". In the St. James episode there was no suggestion that Johnson himself had struck an inmate, but it was alleged that he had encouraged the correctional officers to do the striking, and that the striking occurred in his presence. In the Somerton episode, Dassy's allegation was not only that there was the striking of Somerton in the presence of Wilson, but that Wilson himself had participated. Somerton made no allegation of being struck by Wilson. Dassy's allegation in this regard is unsupported and should not be accepted.

There is the question of whether Wilson should have taken steps against Dassy when he saw Dassy strike Somerton. This was against jail regulations and I think it was the evidence of C.O. 4 Robert Nuttall that had a line officer struck an inmate in his presence he would have put the line officer on charge. It may also be that, since Dassy was a new correctional officer, Wilson felt it was enough to separate him from Somerton.

Dassy's retelling of the alleged occurrence continued.

Q. What happened after his leg brace came off?

A. Then Sergeant Wilson said, that is enough, put him back in the 8 corridor. . . . We took him back. I still had - I grabbed him by the hair again, the back of the head and we took him back to the corridor and Stafford hit him three or four more times with an open hand in the face.

Q. Stafford, yes, did he say anything at that time?

A. No, sir. He said, "This will teach you the next time to apologize when you are asked to, and this would never have happened."

Dassy said this last episode of slapping occurred outside the corridor where the inmates were able to observe it.

Q. So this would be a slapping done in the presence of the inmates?

A. Yes, sir.

Q. It seems to me that would be breaching one of the cardinal rules, would it not?

A. Knowing Mr. Stafford, when he is in the rage he is in, he couldn't care less who was watching him.

Q. But that would have been against one of the cardinal rules?

A. Oh, yes.

Q. That you don't really assault a prisoner in the presence of other prisoners?

A. Yes, sir.

Q. Now then, what else happened as far as this fellow was concerned?

A. He was put back in. The other inmates, it appeared to me, did not like this person either and they more or less told him, you know, he could have saved himself a lot of trouble if he had apologized because he would never have been touched if he had of. Mr. Boakes wrote up a charge report on him which I witnessed. I signed it myself as a witness, and I believe Mr. Stafford signed it

too because I got a disposition sheet on it, oh, about a week afterwards, and I don't know if I still have a copy of it or not.

Dassy's recollection was correct in that a charge was written up by Boakes and both Dassy and Stafford signed as witnesses.

Dassy gave evidence that Wilson came on the scene as a result of "hearing us, or Stafford, hollering to apologize. I think that would have brought him out."

He indicated that at that time things were relatively quiet. This evidence was contrary to the evidence of one of the other witnesses to the effect that Wilson was summoned to come out and speak to Somerton.

Dassy was asked if there was any explanation for the difference between his evidence and what he had signed in the Misconduct Report as a witness. Dassy replied, "Well, sir, I would never put in writing that I beat a person."

Dassy further stated that he did not say anything further at the time than what he had signed as a witness on the report. "No, that was up to the guard that was charging him, what to put in the report, and all I was obliged to do was sign it as a witness . . ."

In Mr. Carter's cross-examination, Dassy said the incident occurred at about 6:00 a.m. and there were three separate places where it occurred: initially, outside Corridors 7 and 8, then outside the sergeants' office, and, finally, outside Corridor 8 again.

As for the Misconduct Report, Dassy stated that it was not correct in saying that Somerton was "restrained by Mr. Stafford and Mr. Dassy and returned to 8 corridor". He agreed that he did not request any changes in the report, "because, sir, I am not going to tell Mr. Boakes how to make out his report, and if Mr. Boakes doesn't want to say an inmate was beaten, I am not about to question him. I am there to sign it and protect myself and Mr. Boakes and Mr. Stafford and Mr. Wilson."

I would suggest, with reference to the investigation of a Misconduct Report, that not only should it be made by an independent senior correctional officer but he should check with those who signed as witnesses that they agree with everything in Part 1 of the report. There have been many instances in which those signing as witnesses were only witnesses to some of the events mentioned; if this is the case, it should be clearly indicated in the report or there should be a supplementary report or another page attached to the report. In other words, signing a report is attesting to everything stated in the report and it should be treated more seriously by correctional officers than was indicated at times during the inquiry. The importance of this was also brought out by Mr. Carter in his cross-examination of Dassy.

Q. You knew if it was found to be true, Mr. Somerton was going to be punished?

A. Yes, sir.

Q. And you I take it were prepared to lie in order to cause Mr. Somerton to be punished?

A. Yes, sir.

Q. It didn't bother you at all that you were doing that?

A. Like I say, sir, I am protecting myself. If I was making \$100,000 a year and didn't have to depend on working, I wouldn't have to lie, but in these positions you have got no alternative.

Q. But to lie?

A. But to lie if you want to keep your job.

One wonders about the morality of a person who makes a statement such as this. The answer was a glib one. There was nothing that came out in the inquiry to indicate that it was in any way necessary to lie as part of the terms of working at the Toronto Jail.

EVIDENCE OF JANE MANNERHOLM

In referring to the Somerton incident which she thought occurred in August 1974, Miss Mannerholm stated that, at the time, she was working on the night shift and she was going from the medical examination room to the medical records office in the rotunda. When she was about half way to the medical records room she was able to see towards Corridor 8 and she saw "Mr. Dassy holding one inmate".

A. I saw him holding the inmate's hair in the back and bending it back, the head back. And I saw Mr. Stafford, and Sergeant Wilson was, I presume, punching him. I saw their arms moving against the inmate.

THE COMMISSIONER. I'm sorry, I didn't hear that.

A. Mr. Stafford and Sergeant Wilson. I saw them punching the inmate.

MR. MCRAE. All right. Do you know who that inmate was?

A. Yes, Somerton.

She was able to identify inmate Nathaniel T. Somerton from a photograph without any difficulty. She stated that Somerton was just outside Corridor 8 on the landing.

She also identified Wilson and Stafford from photographs.

Q. What happened then?

A. I was just looking while I was going into Medical Records. I think the telephone rang or something. It is the same line in Medical Records as we have in the nursing office and the telephone rang, I think.

Q. So you continued on into the rotunda and into the Medical Records office here?

A. Yes.

Q. Did you see anything further with respect to this?

A. No, I did not see anything at all. . . .

Q. Do you have any personal knowledge as to why he was being punched, if he was?

A. No, I don't, only what I heard in the testimony yesterday, but I did not know that then.

Q. Did the inmate say anything to you?

A. No.

Q. Was he fighting with the officers?

A. No.

Q. Was he saying anything?

A. Nothing that I could hear.

Q. Can you tell us if the officers were using unnecessary force?

A. I don't know; I don't know what the incident was. . . .

Q. Did you report that to anybody, or anything?

A. No.

THE COMMISSIONER. Were there just the three correctional officers there or was there anyone else there at this time?

A. I could only see three.

Q. Were you able to see sufficiently in that area to be able to tell if there was any other correctional officer?

A. I could see very well. I was just in the middle of the landing.

Q. And you did not see any other correctional officer there?

A. No.

Miss Mannerholm said that although she had talked to the Assistant Superintendent, Mr. Mulhern, she never mentioned any of the episodes that she related before the Commission, including the Somerton episode.

She resigned from the Toronto Jail on September 24 and admitted that she disregarded the 14 days' notice required and left as of the date of her notice of resignation. She gave as an excuse for not "working off" her 14 days' notice the fact that she had a kidney problem and was supposed to go to hospital. She said she was living with Gary Dassy at that time.

It is a fair inference from her evidence that she was discussing the allegations of excessive use of force with Dassy prior to giving evidence before the Commission. This would include the Somerton incident. These discussions could have dated back to July 1974, although on further cross-examination Miss Mannerholm stated that it was not necessary for her to speak to Dassy about this matter as he was present, "He was involved in it . . . he was there, why should I tell him?"

Miss Mannerholm said that the first person that she told about the Somerton matter was Miss Kaye Fulton of the *Toronto Star*, in September or October 1974, just before the series of articles appeared in that newspaper.

MR. CARTER. When you witnessed this event, did you know whether or not the inmate was wearing a leg brace?

A. No, I did not know that —

Q. We are clear that it took place, you say outside —

A. 8 corridor.

Q. How long did you witness this incident?

A. A second maybe.

Q. A second, just passing through, you glanced over and saw what was

happening and continued on your way?

A. That is correct.

EVIDENCE OF NATHAN TERRENCE WAYNE SOMERTON

Somerton was born in Newfoundland and was 23 at the time of giving evidence. He had completed Grade VIII and spent eight months in the Canadian Navy. He then took a job in the mines in Northern Ontario. As for leaving the Navy, he said, "I went AWOL and then I turned myself in. When I got back to Nova Scotia the commanding officer asked me if I still wanted to leave and I said yes. So I got an honourable discharge."

He said he had lived in Toronto for several years. He was divorced. At the time of giving evidence he was an inmate at the Toronto Jail in connection with a charge of assaulting a police officer. In September 1974 he was convicted of assault occasioning bodily harm and sentenced to 60 days and two years probation. The other matters that he seemed to have been involved in were in connection with theft, a dangerous weapon, and assault.

Somerton stated that a correctional officer came to take him from segregation, where he had been lodged on July 22, for his court appearance on July 23. He said he was awakened some time after 5:30 in the morning and he was then escorted to the "clothes area" to change into his own clothes, to go to court. Actually there were probably two changes of clothing that morning, from the segregation garment to jail "blues" and then into his regular clothes.

Somerton said that after he had changed into what we might refer to as his court clothes, he was walking up the stairs (from the basement to Corridors 7 and 8, the corridors used for housing inmates who were going to court, and which were known as the court cells).

"I was walking up the stairs and this guard said, 'Come on, now, move it along.'"

Somerton was unable to identify the correctional officer who took him from segregation to where he picked up his court clothes and he did not recall whether it was the same correctional officer who brought him up the stairs. He identified the correctional officer who brought him upstairs as Stafford. This is contrary to the evidence of the correctional officers and it was indicated that Boakes was the correctional officer who brought Somerton up the stairs and that Stafford joined in the incident later.

Somerton said that when he was asked to move faster he replied, "'I can't move any ———' okay if I swear?"

THE COMMISSIONER. You use the same language as you used at that time.

A. I said, "I can't move any [deletion] faster." Exact words. Right?

MR. MCRAE. Why couldn't you move any faster?

A. Because, as you know, I got a brace on my leg.

Q. All right. You had better tell us about that. You had a brace on your leg?

A. Right.

Q. How did you get a brace and why did you have a brace?

A. Well, I was injured in a mining accident – well, it was December 21, 1969.

Q. Yes.

A. And I had about maybe five operations after that, you know, trying to get it put back together right.

The brace was on the right leg and was attached to the leg with a strap just below the knee and another strap on the boot.

A. I leave it on all the time, sure, except when I go to sleep.

Q. You had put it on first thing in the morning?

A. First thing. Well, I couldn't walk without it.

Q. Did you have a cane or anything like that?

A. No.

Somerton said that he was then shoved by the correctional officer escorting him up the stairs, and after that Dassy "just ran down the stairs and grabbed me by the hair and pulled me up".

Q. Then Mr. Dassy came to the stairs and pulled you by the hair?

A. Yeah. I was about – oh, three-quarters of the way up, a few steps from the top, and he pulled me up there, then that's when he slammed me against the wall and said, apologize for swearing, and I didn't apologize. I didn't swear at nobody, so I didn't apologize to nobody.

Somerton said that he was then dragged by Dassy and Stafford to a corner of the rotunda. He indicated an area close to the sergeants' office. He said that two other correctional officers came over and he was "kicked, punched, just about everything you can name". He stated that one of the correctional officers sat on him and every part of his body was kicked except his face and his "private parts". He said, "I don't know if I was knocked down or what, or I fell down or laid down, I don't know."

Q. But at some point, you found yourself on the floor?

A. Right, yeah. . . . Like I have got slapped around before, you know, by the guards, and never made a complaint, but it was different that time because they did it. I was being – they humiliated me in front of about thirty or forty people.

Q. Did what?

A. Beat me up, yeah.

Q. Where were the other people, the witnesses?

A. They were in 7 and 8 cells. They were hollering out, "Well, apologize. Apologize man." I was in the right, so I wasn't going to apologize, man.

Somerton also said that Dassy had said to him that he was to apologize

for swearing at Dassy. "I don't know. I don't know what he meant by that. He said, 'Apologize for swearing at me.' That's his exact words, what he said. The guy was a bit touched anyhow."

Q. Did you know him before this, did you know Mr. Dassy before this?

A. Not before this, no. . . . I might have seen him but I didn't, you know, I can't place him. I have been in the Don Jail, you know, lots of times, and I only know about four guards in there, you know, because I don't associate with the guards. I just stay clear of them. I don't know many of them, only one or two and that's it. The last time I was in there, I spent most of the time in the hole and the rest of the time I was in the hospital.

The above may explain the misidentification apparently of Stafford for Boakes. Somerton said there were originally two correctional officers and then two others joined in.

According to the evidence of Dassy, there were Boakes, Stafford, and himself, and at a later time Wilson joined them. This would total four but the timing is at variance.

On further examination, Somerton was not sure whether he was struck by more than two correctional officers, and then he added that a "white shirt" came along. He didn't know whether it was a sergeant or a lieutenant. "He came along and he said to Dassy and the other guys – well, to the guys that were there, 'Don't hit him no more.' So then, Dassy just reeled off and punched me in the mouth right in front of the lieutenant and the lieutenant walked away."

This evidence is also at variance with Dassy's in that, according to him, Wilson also struck Somerton. But Somerton made no such allegation. In view of this and in view of the fact that Dassy had some antipathy towards Wilson, the strongest evidence against Wilson is that he was present when Dassy struck Somerton and did not put Dassy on charge or do anything else about it.

Somerton commented on this:

A. He was standing right there when Dassy punched me in the mouth and then he walked away. I figured he was going to somebody higher. No way. He was scared of Dassy. . . . Then I got brought back to my cell by Dassy, like the court cells. And he said are you going to apologize, you know, and I said I am not going to apologize. That was when he punched me in the face again.

Q. Where was it that he punched you in the face this time?

A. Right by 7 and 8 —

Q. Was that the last time he asked you if you were going to apologize?

A. That was the last time, I guess he got the message that I was not going to.

Q. How many times did Dassy ask you to apologize altogether?

A. I do not know, he asked me a lot of times. I believe it was – the way he was saying it, you know, while I was on the ground, apologize, apologize, like he was a madman or something. And Stafford getting his kicks in.

Somerton estimated that he was hit and kicked for three or four minutes.

during which time the brace came off his leg; to be more precise, he indicated that the bottom of his shoe came off and the brace was then partially off his leg, being still strapped to his leg just below the knee.

He was asked if he received any injury as a result of the incident and his reply was, "All I got was an infection at the back of my leg."

According to Dr. George Pennal, head of the department of surgery at St. Joseph's Hospital, Somerton was admitted on August 11, 1974. At that time there was no infection but there was a small break in the skin on the calf, about the size of a dime. Dr. Pennal indicated that any small force on that part of the leg would cause the skin to break because it was weak in that area.

Dr. Pennal said Somerton had had "very bad injury to his leg and ankle some years previously, and had extensive skin grafting, and so on, and I asked one of the plastic surgeons in our hospital to see him with regard to where it would be best for me to make the incision to carry out the bone graft. It was Dr. Salter who saw him for this purpose – not for the little ulceration. In fact, the little ulceration was so innocuous and so minor that neither I, or my resident, made any comment, or made any record of it on the note. Dr. Salter, on seeing him, did record this and did record that he had been told that this had come from an injury in the jail."

The following exchange occurred in the cross-examination by Mr. Carter:

MR. CARTER. So that if he received a series of kicks to that area, to his leg, would you not expect to find much more in the way of skin damage than this little ulceration the size of a dime?

A. You would, yes.

Referring again to the evidence of Somerton, he stated that he was black and blue and bruised all over. He said that there was a scrape on his back in a couple of places, and that his lip was bleeding and he had a headache for a while. He also said that he informed his lawyer about it when he was in court. The headaches lasted "a few days".

Somerton stated with reference to his request to see a doctor, "No, I don't think I requested to see a doctor the same day. It was a couple of days after that because, like, it takes a while for infection to set in. That is what I wanted to see him about."

The first medical note of the Toronto Jail after this event was dated August 6 and the report was: "Nerves going crazy." Then there was a prescription, signed by Dr. Dickinson, and then a further note on the same day, also signed by Dr. Dickinson: "Refused to sign authority for information re leg from St. Joseph's Hospital." The second note may indicate that Somerton had made a complaint about his leg.

Somerton specifically denied Dassy's evidence that he (Somerton) had "taken a swing at" Boakes. He repeated that this did not happen: "I didn't take a swing at nobody."

Somerton stated that he made no complaint about the incident until September or October 1974. He was in segregation at that time and he complained to "one of the big bosses". He was asked why he did not complain earlier and he indicated that he didn't want to make a complaint while Dassy

was still working at the jail, "because I didn't want to get beat up again".

Reverting to the day of the incident, Somerton gave further information against Dassy.

MR. MCRAE. Is there anything else you can tell us about this incident that you haven't had an opportunity of telling us about?

A. Well now, let me think, sir. All I know when I came back from court that same day, you know, Dassy was there and I was in the little bullpen —

Q. Where is the little bullpen?

A. Right across from 8.

Q. That would be the reception room opposite 8 corridor?

A. That's right.

Q. I see.

A. A small holding room, right, and Dassy said, if you cross me again you will be wearing one on the other leg, meaning a brace.

Q. Was there any discussion about who was going to take you down to segregation?

A. Yes. He wanted to take me down but he didn't. . . .

Q. What did he say to the guard that was on duty?

A. He said, "Let me take him down to segregation."

Q. And what did you take that to mean?

A. Meaning he wanted to finish up some unfinished business.

Q. Meaning that he was going to hit you again?

A. Right.

Somerton also said that when he was before Mr. Taylor in connection with the second Misconduct Report he did not tell Mr. Taylor that he had been assaulted by Dassy and Stafford. Nor did he tell Mr. Taylor that he wanted to see a doctor. He said Mr. Taylor "just walked in and gave me a sentence and walked out like they usually do".

Q. Did he walk into your cell?

A. Yeah, he walked in with a couple of other guards.

Q. And did he read the Misconduct Report to you or tell you what was alleged against you?

A. No, he didn't. He didn't, no.

Q. He didn't?

A. No.

Q. Did he ask you if you wanted to say anything?

A. No.

Q. Did you try to say anything?

A. I tried to say something but he left.

I do not accept this evidence of Somerton as it is against all established procedure and I am satisfied that Mr. Taylor would have read to him the charge on the Misconduct Report and that if Somerton had wished to make a complaint of assault or a request to see a doctor that he would have had that opportunity.

Commission counsel advised Somerton that it was Boakes who had made out the charge against him and who had said in the Misconduct Report that he (Boakes) was the one who was escorting Somerton up the stairs. The charge in Part 1, the statement of Boakes, was read to Somerton, who said:

A. Well, they had to put something down. You know, it's a bunch of lies. Man, I can't stand that, you know. I took a swing at him? I never have taken a swing at a guard in my life. Right now I am in there for assaulting a cop I didn't even touch, you know.

Q. Apparently you had a hearing on this charge on July 24 as well, and I am assuming at the same time —

A. They called a hearing.

Q. And as the Commissioner has pointed out he noted that you said you didn't swear at the officer and you didn't swing at him. It's all lies?

A. Right.

THE COMMISSIONER. I think one of the reasons that Mr. McRae is showing you this is that —

A. Yes, they are trying to make a liar out of me.

Q. No, no. That is not what he is trying to do at all. Don't be so much on the defensive.

A. I have never seen such a phony Commission. This is supposed to be a Royal Commission, right? The way it looks right now you are taking the guards' words, you know. It's so phony it stinks, you know.

Q. Well, Mr. —

A. It is phony.

Q. Well, Mr. Somerton, you are entitled to your views. I take issue with the statements you have made, because we are just beginning to hear this matter, so how could you say that we are taking the guards' words? Nothing has been decided with reference to your incident at all, so that's not correct . . . Mr. McRae is telling you about this Misconduct Report because it indicates that it was Correctional Officer Boakes, not Correctional Officer Stafford, who was taking you up the stairs.

A. Well, I say —

Q. You disagree with that, do you?

A. I disagree because I know that Stafford brought me up. Now Boakes — he might have been around but I know Stafford brought me up the stairs. I know that for a fact and I will swear on one thousand Bibles because I know that it was Stafford. Did I hear you say that you are believing Boakes?

Q. I haven't said that I believed anybody yet. I haven't made any decision about this matter, so just don't jump to conclusions.

Among other statements made by Somerton was one that correctional officers and inmates were both angry with Dassy — correctional officers because "he was trying to bring out the truth of the Don Jail that a lot of people were trying to cover up" and inmates because of alleged assaults. He stated that Stafford had "beat a guy up in front of my face last night".

This allegation was investigated by the Commission investigators. Indeed, every allegation that was made, either by way of letters to the Commission

or by way of verbal complaints or in statements made during the giving of testimony, was fully investigated, and if it came within the terms of reference of the Commission it was heard by the Commission, either by way of *viva voce* evidence or by way of summaries presented in open court to the Commission.

Somerton apparently did not relate well to the Toronto Jail. He also made mention of a "goon squad" and explained that this was not a fixed group. "I have been in jail in four states and I have been in jail in seven provinces, but the Don Jail is the worst jail I have ever been in. I mean, the food is not too bad, right? It is pretty cool, you know, but as far as guards, man, geez, they treat you like animals in that place. You cannot fight back. You fight back and 10 of them are around you.

"No goon squad, geez! You got a goon squad in that place, there always has been. Maybe the superiors don't know about it but there is one there. . . . They are not always the same people. How could it be, they do not work a 24-hour shift.

"When something happens in the Don they, you know, like somebody gets into an argument with the guards, all of a sudden there is six, seven people on one guy.

"Now take me this summer, right? I got a busted leg, you know, why the hell does it take four people? Why the hell should they beat me up?"

The fact that the brace on Somerton's leg was dislodged would indicate that he was involved in a fracas of some kind. If he took "a swing" at Boakes as alleged, then of course he deserved to be subjected to discipline. It was not up to the correctional officers to physically attack Somerton if the incident was already finished.

There was no suggestion that, after the time Somerton was on the landing opposite Corridors 7 and 8, he was threatening any of the correctional officers. It was a case of refusing to apologize and, as indicated earlier, he should have been placed on charge and a hearing held to ascertain if in fact he did swing at Boakes. If he did attempt to strike a correctional officer then, of course, he should have been charged and made to suffer whatever penalty the Superintendent thought proper.

In view of the medical records at the hospital and the evidence of Dr. Pennal, and the fact that no complaint was made to Mr. Taylor, I do not think the incident involved as much physical violence as was made out by Dassy and Somerton.

In answer to questioning by Mr. Salem, Somerton said that he could not say whether it was Dassy or Stafford who was grabbing him and dragging him by the hair. He stated that both were kicking him. It was on the way back to Corridors 7 and 8 that he noticed that the brace on his leg had been kicked off. He said that the shoe was still on and the brace was detached only at the bottom.

It was suggested by Mr. Carter that when Somerton was admitted to the Toronto Jail in June 1974 he was again "coming down off speed". There was then some discussion as to whether this was correct and reference was made to the medical summary at the Toronto Jail which showed an entry on

July 16, 1974, and a notation over the signature of Dr. Dickinson, "coming down off speed". Somerton's answer to this was, "I believe that is when I did the two hits of speed, I'm not sure."

As for the notation of August 6, 1974, Somerton stated, "My nerves are always going crazy."

Q. Would that be as a result of you being taken off speed?

A. It could have been. I tell you I must have been a long, long time coming down because my nerves have been bad for a long time.

Q. But it could have been, isn't that right?

A. It could have been.

Q. And if it was, you would still be under the mental influences of speed; you would be paranoid and the like, wouldn't you?

A. I guess I could.

Somerton then indicated that the effect of the "two hits of speed" would not last through to August 6. There was, however, the implication in Mr. Carter's questioning that he could have been suffering the effects of "coming down off speed" on July 22 and 23. As for the effects of speed:

MR. CARTER. When you are under the influence or under the effects of speed you are ——

A. Paranoid.

Q. You get very paranoid, don't you? You misinterpret any remarks addressed to you? Correct?

A. Yes.

Q. You feel that really everybody is out to get you.

A. That is true.

Mr. Carter then cross-examined Somerton as to the opportunities he had had to make a complaint to Mr. Taylor and pointed out to him that Part 3 of both Misconduct Reports indicated statements made by Somerton at the time of the misconduct hearing. It was also brought out by Mr. Carter that at 9:45 that same morning Somerton went to the Legal Aid office.

Q. Did you tell Legal Aid you had been beaten the day before?

A. I wouldn't tell nobody in the Don Jail that I was beaten, you know.

Q. Not even a lawyer from Legal Aid?

A. No, because I don't trust none of them because they all work together in this place and so many people make complaints and it is just thrown in the garbage.

Another entry in the segregation log showed that Somerton saw a probation officer, a Miss Smith, but made no complaint to her about the assault. There were also references to throwing a sandwich at one of the correctional officers. There was a further entry indicating that Somerton was visited by a nurse in connection with nerve medicine he was getting, and he said this was "once or twice a day". He stated that he made no complaints

to the nurse, "because it wouldn't do any good".

Referring to Dr. Pennal, Somerton said: "He is a good doctor. He is one of the best but I can't relate to him. He gets the job done and that is it. I don't talk to him. I walk in and I don't talk too much and that's it."

It is clear from the excerpts from the transcript quoted above, and certainly from Somerton's evidence *in toto* and his manner of giving evidence, that he is a very hostile person and one who would tax the patience of correctional officers. Someone such as Somerton should be dealt with mainly by senior staff and experienced, low-keyed line correctional officers whenever possible. If specially trained crisis intervention personnel were available, they should be employed on movement of these more volatile types of inmates, and indeed for all but the most routine contacts with them.

Dassy was asked about witnesses and he mentioned Miss Mannerholm and two inmates who were identified as Allan King and Keith Baigent. Baigent was called to give evidence. He said he was a corridor man and was working with inmate King, but he did not recall the incident. The evidence of King and of inmates O'Hanley and St. James will now be considered, following which the evidence of the other named officers will be reviewed.

EVIDENCE OF ALLAN FRANCIS KING

This witness was 23 at the time of giving his evidence. He indicated that he had been in trouble with the law since he was 16. He had been an inmate at the Mimico Reformatory and was transferred to the Toronto Jail on May 2, for trying to smuggle whisky into the reformatory. This is another example of behavioural problems from other institutions being transferred to the Toronto Jail.

King said that he was working as a corridor man for Corridors 7 and 8 and had just finished assisting in the feeding of inmates. He said that he saw Dassy and Stafford holding onto Somerton and Stafford had said something to Somerton, "Don't call me anything like that you [deletion] punk." Then Stafford struck Somerton with the back of his hand. "It was a pretty good back-hand, I would say." King said Somerton then denied calling Stafford any name. Dassy then kneed Somerton in the stomach with as much force as he could and Stafford struck Somerton on the back. Somerton was then taken into the rotunda.

King said that the incident took about a minute up to that point and that Dassy told King and another corridor man that they were to go to the storage closet opposite Corridor 7. The implication was that in this way they would be prevented from seeing what was going on. King said that while he was in the storage room he could hear something that sounded like the hitting of wood.

King stated that he saw Somerton later that day, around noon, and told

him who the correctional officers were who had struck him. He said that Somerton had a swollen lip and that Somerton told him he didn't know why the correctional officers had picked on him.

It was a result of Somerton asking King if he had seen what happened that King told him who the correctional officers were. King made no mention of Boakes or Wilson.

King gave the impression of being a reliable witness.

EVIDENCE OF MICHAEL JAMES O'HANLEY

O'Hanley had also given evidence before the Commission with reference to other matters. He was 18 years of age. He indicated that he was in Corridors 3 and 4, which is where the younger offenders are kept whenever possible, and had been there from April until August of 1974. He was sentenced to nine months and 15 months concurrent on breaking and entering charges in February 1974. He was transferred to Guelph early in March and was brought back to the Toronto Jail early in April to face three more charges there. He was remanded from week to week until August, when the three charges were dropped.

O'Hanley was of the opinion that Somerton was taken from the court cells – Corridors 7 and 8 – by Stafford and Dassy, who grabbed him and hit him. He said that Stafford did most of the hitting and Dassy was holding his arms. They then took him “around the corner inside the dome”.

A. They took him there, but you could hear him yelling and they were hitting him.

MR. MCRAE. How do you know they were hitting him?

A. He was on the floor and you could hear him yelling. And after a white shirt came by – I don't know who it was came by – and they stopped.

Q. Who was the white shirt?

A. I don't know.

Q. You have no idea?

A. I can't remember. And they were talking to him and then they brought him back to the corridor, but before they brought him back to the corridor they hit him a couple more times. And they threw him in the corridor. And his face was bleeding and everything.

Q. Which corridor?

A. The same corridor.

Q. The same corridor you were in – 8 corridor?

A. Yes.

Q. Did you see where he had come from before he came out of the corridor?

A. We were all inside the corridor and they took him out. I think he came from somewhere else first, but I know he was in there and they took him out and

they put him back in there.

Q. Did you see anyone, other than Mr. Stafford and Mr. Dassy, hit him?

A. There was another guard, but I don't know him. I can't remember what he looks like.

Q. You can't remember who he is?

A. No.

Q. You don't think he hit him?

A. No, I don't think so.

Q. Did Mr. Dassy hit him?

A. Yes, a couple of times. Mr. Stafford was the one that did most of the hitting.

O'Hanley stated that Somerton did nothing more than try to defend himself.

Q. You didn't see him hit anybody?

A. I didn't see him hit the guards.

Q. Did you see him go off his feet, the man on the floor?

A. Yes, they were kicking him and he was on the floor. I couldn't see him laying on the floor but I could see the guards kicking.

Q. Why couldn't you see him lying on the floor?

A. He was around the corner. There is a little wall and then there is the bars. If he was on the floor the guard would have to be by the bars and you couldn't see through it.

Q. You couldn't see him but you could see the correctional officers kicking?

A. Yes.

Q. By the correctional officers you mean Dassy and Stafford?

A. One of them was kicking him. Mr. Stafford was kicking him. I think it was Mr. Stafford that was kicking him. . . . Mr. Dassy was over further and I couldn't see him.

It was O'Hanley's evidence that when the "white shirt" arrived they stopped the assault on Somerton, but after he left and Somerton was taken back to the corridor Stafford hit Somerton as he was going into the corridor. He said that this was not seen by the senior officer.

Q. Was there any suggestion by anyone that Somerton should apologize?

A. That's what it was about.

Q. All right. Is there anything else you can tell us about that incident involving Mr. Somerton?

A. No.

Q. You say when he came into the corridor there was blood on his face?

A. Yes. He went to wash his face off.

Q. You saw him do that?

A. I saw him when he came back.

O'Hanley said that the sink was at the end of the corridor. He also said that he saw Somerton's brace "sticking out of the shoe".

EVIDENCE OF CHARLES ALPHONSE CHRISTOPHER ST. JAMES

St. James was the subject of another incident investigated by the Commission. He was 57 years of age at the time of giving evidence. He said he was in Corridor 8 when the Somerton incident occurred. He estimated the time at about 6:00 a.m. Somerton was being brought up the stairs, and "when he got to the top, they punched him a few times, and the leg brace come off, or come loose anyway".

MR. MCRAE. . . . the incident occurred either at the top of the stairs or on the landing outside 8 corridor? . . . What was the first thing you saw or heard?

A. Oh, the guard went to push him, and he swore at them, and they whacked him a few times, you know, that's all I saw.

He identified two of the correctional officers as Dassy and Stafford. He could not remember anyone else among the correctional officers. As was indicated in connection with his own incident, he was a rather reluctant witness, and he added, "They didn't hurt him very badly anyway."

Q. I am afraid we have to find out exactly what happened. You did mention Mr. Stafford and Mr. Dassy?

A. That's why I didn't even want to go through this.

Q. What happened between the inmate with the leg brace and the two correctional officers?

A. They held him, and they hit him a couple of times.

Q. Who held him?

A. Dassy.

Q. How did he hold him?

A. By the arm.

Q. And who hit him?

A. They both did. . . .

Q. And where did they hit him on his body?

A. On the side and the arms.

Q. And you say that the inmate swore at them?

A. Yes, just as they come up the stairs.

Q. What did he say?

A. "Take your [deletion] hands off me," and pushed him in the corridor. . . .

Q. Did you hear the correctional officers, either of them, say anything?

A. Yes, the one asked him to apologize.

Q. Who asked him to apologize?

A. Oh, I don't know.

Q. How many times — just once did they ask?

A. Once or twice.

Although, as stated, St. James was a reluctant witness, nevertheless his evidence was confirmatory of the assault by both Dassy and Stafford.

EVIDENCE OF CYRIL RAYMOND BOAKES

C.O. 2 Boakes was born in England and was 49 at the time of giving evidence. His height was 6'1½" and he weighed 225 pounds. He started working at the Toronto Jail in July 1966, shortly after it was taken over by the province. He stated that after he had been working at the jail for six months he took a five-week training course at Guelph and that this was the only formal correctional training he had. He had a Grade XII education and during World War II served with the British Army in East Africa.

It was Boakes who brought Somerton out of the segregation cell. He described how this happened: "Mr. Dassy came in at approximately a quarter to five and said to me that he didn't want to go and fetch the sleep-ins. Would I go and do it? He wanted to stay on the corridor at 7 and 8."

Boakes said he did not object and went to 2B landing. It is not a very important matter, but according to the evidence of Boakes Somerton changed into jail "blues" in the segregation area and did not change into his court clothes in the clothing area, as we heard in other evidence.

MR. MCRAE. How was Mr. Somerton's attitude?

A. Well, at the time he seemed quite normal. The only thing he did on the way over, he was trying to get a cigarette . . . we were walking through the corridor, and . . . he stopped one of the guards, both of them, and asked them for a cigarette. He got a cigarette off one of them, and he asked one of the two others for a light. This was taking a little bit of time, and I said, "Leave it until you get to the kitchen. There will be plenty of matches and cigarettes there."

Q. And that is all that was said to him? What happened then?

A. He then just walked ahead, and he mumbled something at the steps, which I didn't hear. I didn't take any notice of it.

There was no indication from the above evidence that they had stopped in the kitchen area. The kitchen area would be passed before they reached the stairway leading from the basement to Corridors 7 and 8.

Boakes specifically denied that Somerton was taken into the clothing issue area to get his clothes.

Q. He told us he was taken over into a shower area . . . where they have the clothing issue area, to get his clothes?

A. Not with me, he wasn't.

Q. What happened then?

A. He just walked up the stairs. He changed from his blue clothing and walked up to 7 and 8 dressed, like.

Q. So he would have come through the tunnel and directly up the stairs?

A. Up the stairs, yes.

Q. And that leads up to 7 and 8 corridor?

A. That is right.

Boakes's evidence was not altogether clear about the clothing. Whether this was because he was nervous when giving evidence or because he was having difficulty recalling the sequence of events was unclear.

Boakes indicated that he was walking behind Somerton, and once more he contended that there was nothing untoward about Somerton's behaviour. In fact, he seemed to place some stress on this.

Q. Were you walking behind him?

A. I was behind him.

Q. Did you notice anything unusual about his walk?

A. Yes, he was limping.

Q. Why was he limping?

A. I had asked him the question, and he said he had had a crushed foot in a mining accident and that is why he was wearing a brace.

Q. Did he tell you that that morning?

A. Yes. That is what he told me. He told me that on the B landing, because we were talking quite frankly on B landing. In fact, I had nothing out of place with him at all. There was nothing.

Q. He started ahead, up the stairs, towards 7 and 8?

A. That is right.

Half way up the stairway to Corridors 7 and 8, Boakes said, he saw "a quick movement out of the side – and I thought, to be honest with you, that somebody had thrown toilet paper – something was coming – so I ducked, and nothing happened. I looked up and Dassy was holding him [Somerton] with his arms. Dassy said that he [Somerton] threw a punch at me. I said, 'What for?' Dassy said, 'You didn't see a punch being thrown?' And I replied, 'No, but I did see a movement.' "

Q. You saw a movement?

A. That's all I can say. I said to Somerton, "What's that for?" and he swore at me and I said, "What's going on?" I couldn't make any sense of him. I said, "All right, I'll get Mr. Wilson and let him deal with it" and I walked away.

Boakes was then asked whether Somerton might have been directing his swearing at Dassy and not at him. Boakes's reply was, "I don't know, sir, to tell you the truth. It came as a surprise. I had no reason to have any argument with him."

Boakes was asked about any motive Somerton might have had for swinging at him.

Q. Had you told him to hurry up or anything like that?

A. Yes, I told him to go a little bit – I didn't tell him to go, I told him to leave his cigarettes and matches until he got upstairs. He was taking time – that's all I said to him.

Q. Did Mr. Dassy or Stafford tell him to move faster?

A. Not to my knowledge.

Q. He didn't say anything about not being able to move any faster?

A. No, not that I can recall.

Q. Right. So Mr. Dassy is holding him?

A. Yes.

Q. And he swore at you?

A. Yes. I couldn't get any sense to him as to why he should swing a punch at me. I didn't see it, so I couldn't understand. I went across to the Chief's office and I asked Mr. Wilson, I said, "This fellow has taken a swing at me, and I can't understand. Do you want to come out and have a word with him?"

He said, "Yes, I'll come out and have a word with him." When I entered the dome I saw Somerton lying on the floor. There was a little scuffling going on between Mr. Stafford and Mr. Dassy and I saw Mr. Dassy kicking —

Q. Mr. Stafford and Mr. Dassy?

A. Yes. It looked to me like there was a bit of scuffling going on between them.

Q. Between two correctional officers?

A. Yes. . . . I saw it, it looked to me like, as I say, Mr. Stafford was scuffling with Dassy, and then I saw Dassy kick Somerton and I saw the iron come loose off his leg.

Q. You saw Mr. Stafford scuffling with Mr. Dassy?

A. Yes, it seemed to me like he was trying to protect Somerton. I couldn't tell what was going on. I was more concerned with watching what was happening to the fellow's leg. I saw the iron come loose and I told him to leave him alone. I said he has got a crippled leg.

Boakes's statement that Stafford appeared to be trying to protect Somerton is against the weight of evidence. Perhaps Boakes wanted to assist Stafford. His opinion is not in keeping with the other evidence and therefore cannot be accepted as a sound one. In any event, it was qualified by the statement, "I couldn't tell what was going on."

There is no doubt from Boakes's evidence that Dassy was the aggressor, at least in connection with Dassy's confrontation with Somerton.

A. I tried to step between him and Somerton and Dassy pushed me aside. He said, "I can take care of him." He actually pushed me off balance, and it was at this point Mr. Wilson stepped in and told Dassy to leave him alone, and Dassy refused. He didn't refuse, just carried on. Mr. Wilson forcibly pushed him away.

Q. Carried on doing what?

A. Kicking him.

Q. When you attempted to interfere, Mr. Dassy pushed you away and said he could take care of it? When Sergeant Wilson interfered what happened?

A. He told Mr. Dassy to leave him alone and he didn't right away and Mr. Wilson had to put his hands on Mr. Dassy's shoulders and push him away from Mr. Somerton. . . .

Q. What did you do?

A. I left Mr. Wilson in charge and I went across to another corridor to pick up another man that was going to court.

Boakes said that when he returned, in about three to five minutes, Somer-

ton was being held by Dassy in front of Corridor 8 and "it appeared to me that he [Dassy] was hitting him [Somerton]".

Boakes said that the other inmates in Corridor 8 were "shouting and screaming to cut it out".

Boakes stated that he was definitely the one who had picked Somerton up in segregation and I am satisfied of this. I think that Somerton was in error in mentioning that it was Stafford. Boakes then went on to mention the Misconduct Report.

Q. You filed a Misconduct Report on him?

A. Yes, I filed it on the say-so of Mr. Dassy. I took his word that he had thrown a punch at me, so I charged him with attempted assault.

Q. . . . I think this is a photocopy of this Misconduct Report. Is that correct? Dated the 23rd of July, 1974, the charge is abusive language and striking an officer and disobeying an order?

A. That's right.

Q. He didn't actually strike you?

A. No, he was attempting.

Q. It was attempting?

A. Mm-mmm. He aimed a blow at me. . . . He swore at me.

Q. Oh. "He called me a [deletion] guard and aimed a blow at my face"?

A. That's right.

Q. "Taking me off balance".

A. Well, I ducked, you know —

Q. And you say you didn't see him aim at your face?

A. It was a movement in the corner of my eye.

Q. And you took Dassy's word for it?

A. That's right.

Q. Did he call you this insulting phrase before he swung at you?

A. Yes, it would be about the same time. He was swearing at me at the top of the stairs. I saw this swing movement and I took Dassy's word for it that he aimed a blow at me.

Q. Well, it is different than what you tell us today, because in the Misconduct Report you say "he called me a [deletion] guard and aimed a blow at my face" . . . and today you say you didn't see him aim a blow at you. . . . Then today you told us that it was after Mr. Dassy had him pinned that you asked him what was wrong?

A. Yes, I asked him and he swore again at me then.

Boakes's evidence is not on all fours with the Misconduct Report he filed and is also at variance with that of Dassy. According to Boakes, Dassy had drawn his attention to Somerton's attempted blow.

Q. Now, Mr. Dassy said that it was a result of a complaint by you to him that Somerton had taken a swing at you. What do you say about that?

A. It is not right, sir.

Boakes denied Dassy's claim that he (Boakes), with Dassy and Stafford,

had brought Somerton out to the area between the sergeants' office and Legal Aid and that the three of them had then started to punch Somerton.

Dassy implicated Boakes in the assault. Boakes strongly denied involvement and indicated that he had first left the scene to go to get Wilson, and then left a second time to go for another inmate.

In view of the other evidence, Boakes must be exonerated, for Dassy was the only one, either inmate or correctional officer, who implicated him. Even Somerton did not allege that he was struck by Boakes. As for Boakes's attempt to protect Stafford, if Boakes was away from the scene for parts of the time then he did not know what role Stafford played during those periods.

Mr. McRae pointed out that Dassy had said: "It was either you, or Mr. Stafford, or Mr. Wilson that kicked [Somerton] and knocked the leg brace off. You have heard all the evidence. Do you say that is not true?"

A. That's not true, sir, no.

Q. Did Sergeant Wilson or Mr. Stafford?

A. Mr. Wilson never touched him, sir.

Q. Somerton? What about Mr. Stafford?

A. No, I never saw him touch him. The only thing I saw Mr. Stafford do was pick him up and put him on his feet. The only man I saw touch Somerton at any time was Mr. Dassy.

There was an exchange between the Commissioner and Boakes which, in addition to indicating that Boakes's evidence did not coincide with Dassy's or in some respects with Somerton's, showed that there may have been a deeper significance to the incident, namely, that Dassy, through Boakes, may have instigated it. Although Boakes, in the Misconduct Report against Somerton, referred to Somerton aiming a blow at his face, it appears from the evidence that this was not something that Boakes himself saw but something that was related to him by Dassy.

If Boakes's evidence is to be accepted, that he did nothing after speaking to Somerton some 50 or 60 feet away from the bottom of the stairs, while they were still in the basement, then I do not think that Somerton would have waited until he was half way up the stairs before reacting in the manner alleged, namely aiming a blow at Boakes's face.

It could, however, be that Boakes was attempting to hurry Somerton along, that his recollection of this was faulty, intentionally or otherwise, and that Somerton's resentment reached a peak while they were on the stairs. The other possibility is that Boakes did not, in any way, antagonize Somerton on the stairway, that Somerton did not, in fact, make any untoward move against the correctional officer and that the incident was prompted by some misinterpretation by Dassy, who was not averse to creating excitement. There is also the further possibility, although more remote, of Dassy having dreamed up "the swing" for the purpose of creating an incident. This would not be mentioned but for the fact that there was strong evidence indicating that Dassy had precipitated another incident, where it was implied that he burned pepper to simulate the odour of marijuana and then alleged that inmates were smoking that narcotic.

As for the Misconduct Report, the description of the misconduct was, "Abusive language and striking an officer. Disobeying order." Four sub-sections, namely (b), (d), (g), and (h), of section 23(1) of the regulations were mentioned.

As I pointed out during the inquiry, Part 4 of the Misconduct Report should indicate separately the disposal of each of the charges. For example, in connection with striking an officer the evidence was that there was no striking. The strongest evidence was that there was a "blow aimed". The Superintendent, who presided at the hearing of this misconduct, should have indicated whether the penalty imposed was with reference to the striking or the aiming or the abusive language or the disobeying of an order.

As for the disobeying of an order, there was no evidence as to what order was disobeyed. Could this have been an order to move quicker? Certainly if Misconduct Reports are to be reviewed by the proposed Toronto Jail Council, then Part 4 should clearly indicate the disposition of each of the allegations of misconduct.

Boakes was asked whether Somerton had a quick temper.

A. He didn't seem very stable, sir. I didn't have too much to do with him, but he didn't seem a very stable type. He seemed to have a grudge. Maybe it's because he is a cripple. I find some people with disabilities tend to have a little bit of a chip on their shoulder, like somebody owes them something.

THE COMMISSIONER. Yes. Well, he seemed yesterday, when he gave evidence, to be what at times has been referred to as "an angry young man". And I received the impression yesterday that he reacted very quickly when he thought there was some allegation against him or something he didn't like. . . .

A. The only thing that struck my mind was there could have been some animosity between him and Dassy . . . I fancied I had seen something out of the corner of my eye, and I took Dassy's word for it that he [Somerton] had thrown a punch at me. Yet, when I . . . saw him lying on the floor with Dassy kicking him, I wondered then if there had been some animosity between them. It certainly didn't make sense out of what had happened that morning.

Q. That's the point, it doesn't seem to make any sense for him to strike out at you at some later time.

A. There again, I know I put that in the statement when I charged him with attempted assault, but I took that strictly on Mr. Dassy's word. I didn't see him hitting at me and I didn't see him aim a blow at me really that I could definitely say he did. . . . He had been quite friendly with me.

It is suggested, in connection with the Misconduct Report, that Boakes should have indicated that it was Dassy who had told him that Somerton had struck out at Boakes and that this was not something he had seen himself.

Boakes described an episode that took place while he was on outside hospital duty with Somerton in which Somerton threw "a pot at the nurse, his glasses at me, when I told him to quit this type of behaviour. . . . And there was one night when his behaviour got to the point where he threatened to hit me with a radio. . . . A wooden, plastic radio, about 18 inches long, and he

had turned it on full blast at 4 o'clock in the morning, and I told him it wasn't fair to the other patients in the hospital and that I would take it out of his room if he didn't turn it down. He picked it up and threatened to hit me with it and he challenged me."

A six-page letter in the form of a brief was submitted to the Commission by Boakes. It was filed as Exhibit 328 and was referred immediately to the Minister of Correctional Services. All matters raised in the letter were investigated. The Ministry's subsequent answer was filed as Exhibit 658B.

EVIDENCE OF WILLIAM PAUL STAFFORD

C.O. 2 Stafford had given evidence on other occasions. He was 46, weighed 215 pounds, and was 6' in height. He was born in Scotland and had been an employee of the Toronto Jail since March 1971.

Stafford stated that he had been working the night shift (11:00 to 7:00) and was assigned to Corridors 9 and 10, which are on the second floor of the old building above the court cells, Corridors 7 and 8.

He indicated that he was able, from Corridors 9 and 10, to see Boakes bringing Somerton up the stairs from the basement towards 7 and 8 landing.

Although Boakes tried to show that Somerton was acting quite calmly until he took the alleged swing, Stafford's evidence was that Somerton seemed "slightly agitated" and that this was his normal attitude. "That is the type of man he is usually. He has got a pretty high temper. As Mr. Boakes came up to 8 corridor Somerton tried to take a swing at him. He didn't hit him. The impression I got is that he was going to punch Mr. Boakes."

Stafford then related the events from the time that he alleges Somerton attempted to strike Boakes until Somerton was taken into the rotunda.

A. I saw Somerton raise his fist as if he was going to throw a blow at Mr. Boakes, as if he were going to strike him.

MR. MCRAE. And you have illustrated that you saw Somerton pull his right arm back . . . with his hand balled in a fist . . . as if he was going to strike . . . Mr. Boakes?

A. That's correct.

Q. Go ahead. What happened then?

A. I called to Mr. Dassy who was . . . standing inside 7 corridor. I said, "Hey, did you see what is going on there", and Dassy went over to Nathaniel Somerton. . . . He went over and took charge of Somerton from Mr. Boakes. He held him - Somerton had long hair and he held him by the hair outside of 8 corridor and he started to scream abuse at Somerton saying, "How good are you, take me."

Q. How good are you, take me?

A. Take me meaning trying to incite the man to strike him the same as he tried

to with Mr. Boakes. . . . I told him to remove the man from outside of the corridor into the 8 corridor.

Q. Were you still on the stair?

A. I had come down the stairs by this time. I talked to the man outside of the corridor and I said, take him out to the dome and he took him out into the dome. . . . He still had him by the hair.

Q. And he was threatening him?

A. He was.

Q. And you told him, don't do that outside 8 corridor, take him into the dome?

A. Take him into the dome and see the senior officer.

Q. And is that what happened? Was he taken into the dome?

A. Yes, sir.

Q. Did you assist?

A. I didn't have to.

Q. Well, my question was, did you assist?

A. No, sir.

Q. All right. Did Mr. Dassy take him into the dome?

A. Yes, sir.

He stated that Boakes then went in to get the senior officer on duty to deal with Somerton's attitude and conduct.

Q. And what did you do?

A. Well, Mr. Dassy was striking Somerton by this particular time.

Q. Mr. Dassy was striking Somerton?

A. Yes.

Q. How was he striking him? Can you describe how he was striking him and where he was striking him?

A. He had a hold of his head and was punching him.

Q. He had a hold of his hair?

A. And was punching him.

Q. Where was he punching him?

A. I would say on his whole body.

Q. Over his whole body?

Q. Where was he punching him?

A. On the general area of his body and the face.

Q. Body and face?

A. Yes.

He indicated that Dassy struck Somerton "many times". Stafford said that, to protect himself, Somerton went down on the floor and that Dassy then kicked Somerton. "I can't remember how many times. He did kick him because the brace come off Somerton's leg."

According to Stafford's evidence, rather than striking Somerton himself as has been alleged by some witnesses, his purpose was to protect Somerton.

Q. You said you sort of stepped between Mr. Dassy?

A. Yes.

Q. What do you mean by that?

A. Sort of protect the inmate from any harm, that is all.

Q. What did you do exactly?

A. Put my arm – the office has got a ledge inside of it and I put my hand on the ledge.

Q. Did you attempt to stop Mr. Dassy from striking Somerton?

A. I didn't attempt to stop him but to cut it out. The senior officer was coming ———

Q. You said to cut it out because the senior officer was coming?

A. That is correct, yes.

Q. You didn't interfere and attempt to physically stop Mr. Dassy?

A. Not other than put my body in his path.

Q. I beg your pardon?

A. Other than to intervene.

Q. You tried to put your body in the path?

A. Yes.

Q. Did you not succeed in doing that?

A. No.

Q. Did you hit Somerton yourself?

A. No, I didn't have to.

Q. That is not the point. You say you didn't hit him.

A. No, sir.

Q. Did you kick him?

A. No, sir.

Q. Did Mr. Boakes hit Mr. Somerton?

A. No, sir.

Q. Or kick him?

A. No, sir.

Q. So that we have Mr. Dassy hitting him, holding him by the hair, and Somerton falling and Mr. Dassy kicking Somerton?

A. That's correct.

Q. And your only part in the thing was to attempt to protect the inmate?

A. That's all, sir.

In view of other evidence during the hearings, in which Stafford was involved, and in view of the other evidence of the Somerton incident, one would require some naïve credulity to accept this chivalrous statement.

Stafford, in any event, did indicate that Boakes did not strike Somerton, and this is confirmatory of other evidence, other than that of Dassy. I remain of the opinion that the evidence of Dassy that Boakes struck Somerton should not be accepted.

Q. Would you continue with the narrative and tell us what happened?

A. Mr. Wilson come around and pushed Dassy away, too.

Q. Sergeant Wilson?

A. Yes, sir, and told him to refrain from kicking him.

Q. Was there any talk about Somerton not apologizing? Was Somerton asked to apologize by Mr. Dassy or by you?

A. I believe he was asked to apologize, yes, sir.

Q. By who?

A. I don't know if it was Mr. Wilson or Mr. Dassy at the time. I can't recall. I know they had said something about apologizing, because he was going to strike Mr. Boakes, but Somerton's not that type of person.

Q. Not the type of person to apologize?

A. No, sir.

THE COMMISSIONER. Who asked him to apologize?

A. I can't recall, sir.

MR. MCRAE. Who could it have been?

A. It could either be Mr. Dassy or Mr. Wilson.

Q. Could it have been yourself?

A. I don't recall speaking to Somerton at all.

It is very difficult to imagine someone as voluble as Stafford, under the circumstances that have been related, not addressing some remarks to Somerton.

Stafford said that Wilson held Dassy off and ordered him to stop his attack on Somerton, following which Somerton was lifted to his feet. This confirms the other evidence that Wilson did not participate in the attack on Somerton. Indeed the weight of evidence was that Wilson tried to stop Dassy from the continuation of his attack.

It may well be, as far as Stafford's participation up to this point was concerned, that he stopped attacking Somerton when he saw Wilson coming around the corner. It may be that at that time Stafford also tried to stop Dassy, who would by then be striking an inmate in the presence of a senior officer. At this point, Stafford indicated, he left the scene to return to his duties, stating, "I wasn't really interested too much in it." This statement I find difficult to accept, particularly in view of the following later exchange between Mr. McRae and Stafford:

Q. And did you take part in putting Somerton into the corridor?

A. I may have done, but I can't recall, sir ———

Q. Can you tell us which corridor Mr. Somerton was put into?

A. 8 corridor ———

Q. You didn't assist in putting him in the corridor?

A. No assistance was required . . . he was walking.

Q. Did you walk over to the corridor to where Mr. Dassy or Mr. Boakes put him in?

A. Quite possibly; I can't recall. It was last July.

In answer to further questioning by Mr. McRae, Stafford reiterated his innocence.

Q. Did you, yourself, ever lay hands on Mr. Somerton? By that I mean a restraining hold or any kind of a hold on him?

A. No.

Q. On July 23rd?

A. No, I didn't have to.

Q. Did you hit him with your fist?

A. No, sir.

Q. Or with your hands?

A. No, sir.

Q. Or did you kick him or knee him?

A. No, sir.

Q. Did you use any violence on him at all?

A. No, I didn't have to use any violence on him at all. Mr. Dassy was doing quite a good job.

Q. Did you come in physical contact with him at all, yourself?

A. Other than to help him get . . . up, that is about all.

Of interest is Stafford's opinion that he thought Boakes knew nothing about the blow and that that was why he (Stafford) called to Dassy.

Stafford said that he did not hear Somerton swear at Boakes. As for Dassy's version of the start of the incident, there was conflict between his evidence and that of Stafford.

Q. I have to review with you what Mr. Dassy said . . . he described how Mr. Boakes went to get the inmate and then he said, "The next thing I can recall is Boakes saying that this inmate had attacked him at the top of the stairs."

A. I told Mr. Dassy, Somerton had tried to strike out at Mr. Boakes. Dassy knew nothing about it until I brought his attention to it.

Often the denial or allegation was of less importance than the surrounding evidence. For example, in assessing the type of person Boakes was, Stafford's opinion was of assistance since it coincided with the impression Boakes made when he gave evidence.

A. Mr. Wilson never touched him at all whatsoever. Mr. Boakes didn't do it. Mr. Boakes isn't normally the type of man to use violence on an inmate at all. As a matter of fact, I think never would Mr. Boakes use a problem of that ———

Q. Use what?

A. To use force, I have never known him to use force.

Q. That is not his style, is that ———

A. No, it's not the way he goes about his job.

Stafford quite properly stopped short of describing himself in similar terms.

Q. Did you see Miss Mannerholm in that vicinity at that time?

A. No, I know she was on duty in surgery, but I never saw her.

Q. You never saw her during the trouble?

A. No, sir.

Q. All right. Miss Mannerholm . . . identified Mr. Somerton and she said that

she saw Mr. Dassy holding Somerton's head back by his hair and she said that she could see Mr. Stafford and Mr. Wilson's arms moving against the inmate, Somerton.

A. I don't think it was possible for her to see anything like that, Mr. Wilson never hit him.

Q. What about yourself?

A. I didn't.

It is interesting to note that Stafford at first mentioned only that Wilson had not hit Somerton. Only later, when he was asked, was there the denial concerning himself. One would have thought that Stafford would have mentioned himself first, or, at any rate, at the same time as mentioning Wilson. It may well be that Miss Mannerholm was not deliberately telling a falsehood, although she had strong feelings against Wilson. It may be that when Wilson attempted to separate Dassy from Somerton she thought that Wilson struck Somerton. Otherwise, it would appear that, collusively, she was backing Dassy in the allegation against Wilson.

Stafford was asked again about her evidence.

Q. Could she have been there without you seeing her?

A. No.

Q. You say she made that up, then?

A. Obviously.

With reference to Somerton's statement that Dassy struck him even after Wilson arrived, Stafford said, "I never saw Dassy hit him after Sergeant Wilson was there. I'd say he attempted to but I never saw any blows land."

It was brought to Stafford's attention that not only did Somerton say that Stafford struck him but inmate Allan King also said that he saw Stafford hitting Somerton, to which Stafford made replies that were rather weak for someone who was taking the position that he did not strike Somerton.

Q. The witness Allan King said that he saw you hitting Somerton as well.

A. I don't even remember hitting Somerton.

Q. You don't even remember hitting Somerton?

A. No, sir.

Q. Could you have hit him without remembering?

A. I doubt that very much, sir.

Q. I beg your pardon?

A. I doubt that very much.

Q. Well, this is going back to last July, is it possible that you hit him without knowing?

A. I don't remember hitting him, sir.

Q. Could you have hit him?

A. I think so – I don't think I did though.

Since Stafford had indicated that Boakes was "not the type" to use violence, his own answers given to questions with reference to two incidents

that occurred shortly before he gave evidence are of interest. Stafford gave his evidence on the Somerton allegation on April 10, 1975.

Q. Have you had a couple of problems recently at the jail?

A. What do you mean by problems, sir?

Q. Well, on April the 2nd, did you have something to do with an inmate David Mark Machan?

A. Yes.

Q. Pardon?

A. Yes.

Q. And did you hit Mr. Machan?

A. I believe I did, sir, yes.

Q. You believe you did. We had better find out about that. This is only April the 10th so it would be a week ago yesterday.

A. Yes, sir.

Although there was no justification for the striking, the explanation given by Stafford was revealing.

Q. Where was Mr. Machan at that time?

A. He was sitting on the bench outside the sergeant's office ———

Q. And did you have an encounter with him?

A. I did.

Q. What was it about?

A. He was just being — using sort of dumb insolence, like, you know, I could get no co-operation out of him at all.

Q. What did you need co-operation from him for?

A. I was inquiring why he was there, what was happening, that was all.

Q. You were inquiring why he was sitting in the dome?

A. Yes, sir.

Q. What was his reaction to your inquiry?

A. Just being — never really answered me properly.

Q. Yes. Was he on his feet, standing up, when you talked to him?

A. No, still sitting.

Q. Did you hit him?

A. Yes, sir.

Q. Hit him on the side of the head?

A. I just, you know, gave him a glancing blow on the side of the head.

Q. Because of his insolence?

A. Yes, sir.

THE COMMISSIONER: You are demonstrating a backhand slap?

A. Yes, sir.

MR. MCRAE: He was still sitting when you did that?

A. Yes.

Q. He hadn't attacked you or anything?

A. Well, he just — you know ———

Q. Other than being insolent, I mean.

A. That was it.

Q. Now, do you feel you were justified in hitting someone even with a backhand who is insolent to you?

A. I didn't actually mean to hit — to hurt the man. I just meant to, you know, just give him a rap, that was all.

Q. That's what you did do?

A. Yes, sir.

Q. Did you make a report of that anywhere?

A. No, sir.

Q. How many times did you hit him?

A. Once.

Mr. Carter asked Stafford about the Machan incident.

MR. CARTER. And what was his attitude towards you and the questions you were asking?

A. It was sort of a dumb — you know, just dumb. I term it dumb insolence.

Q. All right. As a result of this dumb insolence, did that cause any change in your attitude?

A. It made me angry, it's something I find difficult to contend with, is this dumb insolence.

Q. All right. And as a result of then becoming angry — or were you in that angry state —

A. Yes.

Q. — when you gave him this backhand slap?

A. Yes.

Q. And is it fair to say, then, you lost your temper as a result?

A. I did, sir.

Q. Was there any intention on your part to cause him any injury or anything of that nature?

A. No, sir, just flared up, that was all.

Of course it is true that Stafford lost his temper. There is no doubt that the work of a correctional officer is fraught with tension. More so at some times than at other times, it is necessary to have the right attitude. The question is, was Machan's conduct such as should have caused a professional correctional officer, acting in a reasonable manner, to have lost his temper? If he was liable to lose his temper in a situation such as the Machan one, caused by a refusal to answer questions, was he more liable to lose his temper under other exasperating conditions such as the Somerton incident, where he thought an inmate attempted to strike an officer?

I am satisfied that in the right setting and with the right type of inmate Stafford could contribute positively, but with inmates such as Machan and Green one may well question Stafford's ability to control himself. That he did not intend to injure either inmate is not in issue. I do not think that Stafford is a person who would be mean purposely.

Four days later, on April 6, there was the Green incident.

Q. Did you have an encounter with an inmate named Robert Gordon Green?

A. Yes, sir.

Q. All right, let's hear about that. Where did you encounter Green?

A. Green was in 7 and 8 area . . . he had attacked an inmate previously and hit him in the mouth with a cup.

Q. How do you know that?

A. Because I was told this.

Q. You were told that when you came on duty?

A. Yeah. I was questioning him. I said why did you attack an inmate, you know.

Q. Well now —

A. I didn't know that Green has got a mental problem at the time.

If Green had struck another inmate then it was up to the correctional officer who was on duty at that time to take the necessary action, and the necessary action would have been to report him to a senior officer. The evidence also indicated a lack of communication between one shift and the next.

Q. Well let's deal with things step by step. You had just signed on duty shortly before 3:00?

A. That's right.

Q. And you were assigned to 7 and 8?

A. That's correct.

Q. And someone had told you that Green had attacked another inmate with a cup?

A. That's correct.

Q. And did you just happen to encounter Green in the —

A. Well, it just happened to be at that particular time so I asked him why he attacked another inmate.

Stafford went on to say that the information that Green had attacked another inmate earlier that day came from an inmate who was the corridor man in 7 and 8.

Q. And so you stopped Green and asked him why he had hit somebody with a cup?

A. That's right. . . . I wanted to know why he attacked him.

Q. Was Green under charge? Had a Misconduct Report been filed with respect to that incident do you know?

A. I don't think so, sir.

Q. That's the normal way it's handled, isn't it?

A. Well, of course, but I don't think there was one put in against him. I don't think the inmate charged him either.

Q. Well, whether there had been one or not, that would be the earlier shift's responsibility?

A. That's correct.

Q. So you stopped Green and asked him why he had hit another inmate with a cup?

A. Yes, sir.

Q. Did you hit him?

A. Well my fingers which were straight – I just, you know, jabbed him in the stomach.

Q. You hit him in the stomach?

A. Yeah, with my fingers.

Q. Just with your straight fingers?

A. Yeah.

Q. You have pretty big fingers?

A. I have, sir.

Q. Then what happened?

A. Well ———

Q. Did he go running into the Chief's office?

A. He did, sir, yeah.

Q. Did you hit him any more?

A. No, sir.

Q. Was he crying? Did he cry after that?

A. He's that type of a chap. . . . He is that type of a person that gets, I believe – people corner him in the corridor and he gets moved around the jail for protective custody. I didn't know that at that particular time. But now I do know it. If I had known it I probably would never have bothered with Green but I just wanted to find out more information because with Green and Tilley . . . coming onto 7 and 8 together and I didn't want them to be mixed . . . so this is why I wanted the information from Green, the reason why he attacked Tilley.

With reference to the Green incident, two things can be said in Stafford's favour and I believe them to be so. One is that he would not have struck Green had he known that Green had, to use the earlier words of Stafford, "a mental problem at the time". The second aspect, which I also believe, is that Stafford was concerned about Green and the inmate whom he had attacked being in the same corridor. It is, of course, one of the duties of a correctional officer to ensure the protection of inmates. In this regard, there should have been some investigation or inquiries. Indeed, it may well be that these should have been made by the earlier shift, although it is possible that the information was not known by the earlier shift. If it had been known by the earlier shift then this certainly should have been communicated to Stafford who was taking over.

Line correctional officers should not be fettered and hampered to the extent that it interferes with their carrying out their duties. This can destroy initiative and make the work uninteresting. Nevertheless the attack of one inmate on another is a serious matter and a senior officer should have been brought into the picture. Certainly, if Stafford could not get the information by ordinary questioning he should not have been jabbing Green in the stomach.

It wasn't so much that Stafford's motivation in questioning Green was wrong. It was the manner in which he went about carrying out his duties that is open to criticism. And, if Green had a mental problem as indicated by Stafford, this should have been communicated to all correctional officers

who would be dealing with him.

Stafford said he did not find this out until later and there was therefore some breakdown in communication.

Q. Well, was Green insolent with you as, in the earlier incident, Machan had been?

A. Not necessarily, sir. I was just asking him a straightforward question.

Q. Well, did you give a jab in the stomach as a warning to him?

A. To warn him about what?

Q. Not to attack Tilley again?

A. I told him — actually if I wanted to find out the information for my own use — when we put these men into segregation — not segregation but into a small holding area, what we have got there opposite 8 corridor ———

Q. Right.

A. I [didn't] want them to be together . . . so I wanted to know why, so I could keep them segregated.

Q. You wanted to know why he had attacked Tilley?

A. Yeah.

Q. And we want to know why you jabbed Green in the stomach.

A. To try to get the information from him.

Q. So that he would be more frank with you, and was he more frank with you after he had ———

A. No, he just screamed and ran. That was all, sir.

He was questioned by Mr. Carter about the amount of force used against Green and he indicated it was "just a slight jab". In any event, according to Stafford's own evidence, it was enough to cause an inmate to cry and to have to report the matter to a senior officer.

MR. CARTER. What degree of force was behind this jab?

A. Not a great deal, sir.

Q. Did you intend to do him any injury?

A. No, just a slight jab, it was nothing.

Q. When you gave him this jab, were you in the course of questioning him about these various things?

A. Yes, sir.

Reverting to the Somerton incident, Mr. McRae questioned Stafford further.

Q. Would an attack on a guard, an unprovoked attack on a guard, be considered a serious thing for an inmate to do by the other guards, by the other correctional officers?

A. Yes, sir.

Q. That would be the most serious offence that an inmate could commit while an inmate as far as the other correctional officers are concerned?

A. On a guard?

Q. Yes?

A. Well, they could kill him.

Q. Sure. If an inmate, for no reason whatsoever attacked a correctional officer?

A. Yes.

Q. You would react to that as a serious incident?

A. Attack him, sir? How do you mean?

Q. Well, in the case we have of Mr. Boakes, and Somerton . . . throwing a swing at Mr. Boakes. That would be some provocation, wouldn't it?

A. Well ———

Q. And you as a correctional officer would retaliate?

A. Not necessarily. I don't retaliate.

Q. You didn't retaliate?

A. No, sir.

The question is whether, on all the evidence that has been quoted, it is likely that Stafford would have "retaliated". It is my opinion that he would have, and that he did against Somerton.

Stafford's evidence also cast some light on the question of whether Boakes was "hurrying Somerton along", going up the stairs. This was denied by Boakes but might explain the attack by Somerton, if there was one. Indeed, the answers of Stafford appeared to indicate that this was the course of action of Boakes and that there was resentment by Somerton and some movement by him that was interpreted by Stafford as a striking out at Boakes.

THE COMMISSIONER. Mr. Stafford, when you saw Somerton lift his arm as if to strike Mr. Boakes, do you know why Somerton did this?

A. No, sir.

Q. Were you able to ascertain what happened immediately before that?

A. Well, I found out from Mr. Boakes that he had just been told to hurry up and I didn't know at that particular time who he was told by. I took it that he must have taken offence at being told to hurry up.

Q. Yes, and did it seem as if it was precipitous or a fast reaction by Somerton?

A. Somerton's reaction?

Q. Just a sudden thing with Somerton?

A. Yes, just a sudden thing.

Q. Yes, so that, if he resented being told to hurry up, in your opinion would that be just immediately before he swung out?

A. Yes, sir.

Q. Yes, so that he was probably told to hurry up as he was going up the stairs?

A. As he was going up the stairs from you know, underneath the stairs, yes, sir.

Q. Now then, you mentioned about calling to Mr. Dassy and do you remember what you said to Dassy?

A. It's kind of difficult at this stage, sir. I don't know. It would be something like, look at that, you know, to draw Mr. Dassy's attention to what was going on. I didn't know whether Somerton was going to continue with the blow or Somerton was possibly going to strike another blow, I didn't know. All I was doing was drawing Mr. Dassy's attention to the fact that he [Somerton] had

made the action as if he was going to strike Mr. Boakes. . . .

Q. Do you know if Mr. Dassy had seen the action by Somerton?

A. No, sir, he didn't see it.

Q. And so that Dassy's action, then, in going to take a hold of Somerton, that was as a result of what you told Dassy, not something that Dassy had seen himself.

A. That's correct, sir.

The above also lends plausibility to the idea that Stafford may have reacted against Somerton in the same way that he said Dassy did. If Stafford wanted Dassy to protect Boakes, is it unreasonable to think that he (Stafford) would have wanted to do the same thing in a similar manner?

THE COMMISSIONER. Can you tell me at what time during this incident it was that the brace came loose from Somerton's leg?

A. Just immediately after Somerton was taken into the dome from the sergeants' office. It was just about that particular time.

Q. Who was present at that time?

A. I believe myself and Mr. Dassy.

Q. Was Sergeant Wilson or Mr. Boakes present at that time?

A. No, sir. . . .

Q. Do you know why Dassy said you had slapped Somerton?

A. I have no idea, sir, but Dassy, what I have seen of Dassy – and I didn't know him too well. I never worked with him too often. As a matter of fact I wasn't even working with him that day – was a violent individual, from what I saw, the way he handled Somerton.

Q. When you say he was violent the way he handled Somerton, you mean he used more force than was necessary on this occasion against Somerton?

A. I would imagine so.

Q. You say you would imagine so?

A. Yes, he used more on Somerton.

Q. Do you think that Dassy may have been annoyed at the fact that an inmate had attempted to strike a correctional officer?

A. Yes, conceivably, could be true, sir.

Q. Would other correctional officers also resent that type of conduct by an inmate?

A. You do.

Q. Do you think you may have become annoyed at that time. . . .

A. Not necessarily so. . . . I can't really say.

Q. Do you know why Dassy attempted to hit Somerton after Sergeant Wilson had arrived, which is according to the evidence.

A. I think just finishing, working that off, this heat he was in that particular time.

Q. Wasn't he concerned with the reaction of the more senior officer to this?

A. He didn't care.

Q. He didn't seem to care if there was a senior officer or not?

A. No, sir.

Q. The evidence would seem to indicate, as you have indicated, that Mr. Dassy

did react strongly on more than one occasion and, in fact, his own evidence is an admission in that regard. I am wondering why a man who is just on staff for three months would tend to act in this way.

A. Possibly to prove himself, you know, to the other guards in the jail that he is a hard man or a man who can handle a situation. . . .

Q. Do you think that he may have seen the odd situation, that he thought this kind of conduct was acceptable?

A. We have situations like this that occur from time to time in the Don Jail where we do have to use physical force.

He was asked about the use of force generally at the Toronto Jail.

THE COMMISSIONER. You had indicated that Mr. Boakes, it was not his style to use force, if that is an expression you used?

A. Yes.

Q. Are there some correctional officers whose style is to use some force?

A. Force is only used when you have a situation you have to control. Force is not an everyday habit in the Don Jail. If you have a situation that requires a certain amount of force to be used, yes.

Q. Apparently these two recent incidents with Machan and with Green were ones in which, in any event, you did touch the person of an inmate?

A. I did.

Q. Are there other correctional officers who would have done the same thing as you, whether you call that force, or something else?

A. I am only speaking for myself. I can't speak for any other officers. I don't know of any other officers. Possibly they may, I don't know. I can't answer.

Q. You have been in the Toronto Jail now for some four years, is it?

A. Yes, sir.

Q. Have you seen anybody else act in that way?

A. People who have acted that way have been people who have been in the situation where I have been, and we have to control a prisoner.

Q. Yes, but neither the Machan situation or the Green situation were ones where it is necessary to control —

A. No, sir.

Q. — a prisoner?

A. No, sir.

Q. But what I want to know, have you seen other correctional officers who have acted in the way you have, when it has not been necessary to control a prisoner or inmate?

A. No.

Q. Jab them in the stomach?

A. Yes, I jabbed them in the stomach. If I'd known they had a mental problem —

Q. Whether he had a mental problem or not, that was the way you approached this particular incident?

A. That is correct, sir.

Q. I am asking you, have you seen or are there other correctional officers who would do the same thing?

- A. Not that I know of, sir.
- Q. You have never seen it?
- A. I have never seen it.

Mr. Zifkin, acting in the absence of Mr. Salem, then questioned Stafford.

MR. ZIFKIN. Mr. Stafford, Mr. McRae asked you on a number of occasions whether you hit or kicked Mr. Somerton and you answered no.

- A. Yes, sir.
- Q. And the last time he did ask you this, that question, you said, "I didn't have to lay a hand on him, because Mr. Dassy was doing such a good job."
- A. That is right.
- Q. Am I right in assuming by your statement that if Mr. Dassy hadn't been doing such a good job, and I take it doing such a good job [meant] he was working him over well, that you would have done something?
- A. No. I think that is taking it out of context. I would have said Mr. Dassy was in control of the situation. I did say he was doing a good job. He was doing a good job. He had the situation under control.
- Q. And under control, it meant hitting and kicking or whatever?
- A. He was overstepping his duties as a correctional officer; yes.

EVIDENCE OF GEORGE WILSON

The next witness, C.O. 4 Wilson, had been employed at the Toronto Jail for approximately six years, working his way up during that time to his present rank. He said he was working the night shift, 11:00 p.m. to 7:00 a.m., at the time of the Somerton incident.

- A. My duties, of course, entailed inspection, night inspection, that is, coming on duty placing the men in the specific areas for work during that evening, and visiting, regular visits around the jail during the evening.
- MR. MCRAE. So you are supervising the jail?
- A. In the old section primarily.
- Q. I see. You wouldn't be the senior ranking officer?
- A. No, sir, there is a lieutenant on as well.
- Q. But you would be the senior officer under the lieutenant?
- A. In the old jail that is correct, sir.
- Q. Where would your headquarters be?
- A. In the Chief's office.

His first knowledge of the Somerton matter was "when Mr. Boakes came around at approximately 5:15 to 5:20".

- A. He used the words "problems between Dassy and Somerton". . . . Mr.

Boakes, he asked me if I would have a word with Somerton. I said certainly. He immediately returned towards the dome area. I was some 12 to 14 paces behind him and ——

Q. Did you hear any noise or anything from the dome?

A. When I got towards the dome I heard shouting. I took it to be – well, it was Dassy's voice and Somerton's, extremely loud voices. When I got around in there it was to find Somerton confronted with Messrs. Stafford and Dassy.

Q. All right, where were they located?

A. It was a small office in the dome.

Q. That is the sergeants' office?

A. Yes. . . . Well, Somerton with his back to the wall; to his left, or left centre, Mr. Stafford, and to his off-right, Mr. Dassy.

Wilson said Somerton was on his feet at that time and he saw Dassy with one hand outstretched towards Somerton's chest and the other cocked in a fist at shoulder height. Wilson said, "I immediately shouted out there, 'Keep your hand off that man.'"

Wilson added, "This fist could either have been in the process of striking or could have been on the return after a blow had been struck. I actually didn't witness any blow being struck."

As for Wilson's reaction to the situation, he stated, "I immediately went between Dassy and Somerton. In fact, I pushed Dassy back, bearing in mind that I actually went around to have a word with Somerton. It was virtually impossible – the state of tension he was in and the shouting. In fact, it was hard to make out just what he was saying, Somerton himself, and he was extremely hostile. . . . I was particularly anxious of course to prevent any striking by Dassy himself and I ordered them to put Somerton back in the corridor. This was done."

It was Wilson's recollection that Somerton was put in Corridor 7. Other evidence indicated that he was put in Corridor 8. He said, "Of course I spoke to Mr. Dassy and said, 'Look, I am not going to have any striking of inmates here.' I left the area and on going back through the dome I could still hear Somerton shouting a bit and even some of the inmates telling him to shut up."

Wilson stated that Boakes left to pick up another inmate. He did not see Somerton on the ground at any time, or anyone sitting on him. He did not see any kicks by Dassy or Stafford or by any other correctional officer. When he noticed Somerton "the brace was off the leg . . . I should say dangling".

Wilson also said he heard no conversation about Somerton having attacked Boakes and refusing to apologize.

As for Dassy's allegation that Wilson had also hit Somerton in the stomach with his fist, Wilson's answer was, "Nothing is more stranger to the truth, sir."

Q. That is Mr. Dassy?

A. He is that.

Q. You didn't hit him at all?

A. I never laid a finger on Somerton.

He was also asked about Miss Mannerholm and said that "if she was there she was very very much in the background but I certainly didn't see her".

Wilson was asked about Somerton being put on charge, and said, "Mr. Boakes asked me about the charge and I told him I looked on it with the utmost gravity, any inmate taking a swing at an officer, because I understood he had thrown a punch at Mr. Boakes." Wilson advised that charges should be laid. As for whether or not the punch had landed on Boakes, Wilson said, "I don't know, sir. Mr. Boakes told me he didn't receive the actual blow."

Wilson was questioned by Mr. McRae with reference to Part 2 of the **Misconduct Report**.

Q. I see that on [the] Misconduct Report on Somerton the investigation, or Part 2, has been filled in by yourself?

A. That is correct. We were taking Somerton to the corridor to go up, and asked him about swearing, and he admitted swearing. His general attitude, he was extremely aggressive and very hostile, indeed.

Again, a senior officer should not investigate an incident to which he was a witness.

Mr. McRae referred Wilson to Miss Mannerholm's statement: "I saw their arms moving against the inmate. . . . Mr. Stafford and Sergeant Wilson, I saw them punching the inmate." Wilson said: "That is a blatant untruth."

Somerton's evidence was put to Wilson. Somerton had said: "This white shirt came along. . . . He came along and he said to Dassy and the other guys . . . 'Don't hit him no more', so then Dassy just reeled off and punched me in the mouth right in front of the lieutenant and the lieutenant walked away. . . . He was standing right there when Dassy punched me in the mouth and then he walked away. I figured he was going to somebody higher. No way. He was scared of Dassy."

Q. Did you see Dassy punch him in the mouth?

A. No, sir. As I have already stated, when I come around there I saw Dassy's left hand outstretched towards Somerton's chest with the right hand shoulder high and clenched fist. As I said, that could have been about to strike or returning after having struck. I witnessed no blow, sir. When I take the Lord's book in my hand I feel the wrath of God.

THE COMMISSIONER. Sergeant Wilson, all witnesses have been sworn and they have all taken the Lord's book in their hand and we seem to have some conflict in evidence, but it is not necessary to protest any more with reference to the oath.

If Dassy did strike Somerton in the presence of Wilson, he should have been disciplined, and I see no reason why Wilson would not have done so. Was Wilson afraid of a confrontation with Dassy? If so, I do not consider it was any physical fear.

The evidence was not strong enough for a finding that Dassy struck Somerton under such circumstances that Wilson was called upon to place Dassy on charge. If there was such striking in Wilson's presence, the blow

may have been started before Wilson's warning to desist. If there was a continuance by Dassy (which I do not believe to be the case), then Wilson would have had to charge Dassy in order to ensure his control of line officers, particularly since Stafford and Boakes had been witnesses. It is as important for senior officers to establish control, discipline, and respect among their line officers as it is for line officers to do so in relation to inmates.

During the evidence of Wilson, it was brought to the attention of the Commission that he had received a card from Somerton's family expressing their appreciation of the help Wilson had been to the inmate. The Commissioner commented: "We have to look at the positive side of the matter. We can't always just be looking at the negative. I think it is most commendable. You may well have saved the young man from returning to trouble and returning to the jail by your understanding and your treatment of him. That was a service to the community as well as to the family."

Wilson agreed that the charge against Somerton of "disobeying an order" was not justified.

Mr. Zifkin asked Wilson about Somerton's temperament.

A. He has an extremely aggressive attitude. He seems to resent authority and very often he will adopt this type of attitude even to other inmates. Aggression. It may be a crust that he has built around himself as a protection, I couldn't say, but we do our utmost at times to try and find out the cause of the ——

Q. How was it displayed on the event in question, Sergeant Wilson?

A. Well, more or less glaring an ——

Q. I see.

A. Really hostile.

EVIDENCE OF WILLIAM JOSEPH TAYLOR

The Superintendent was questioned about the misconduct hearing with reference to Somerton and he advised that he read the charges to Somerton and asked him what his comments were and what he had to say.

Mr. Taylor at all times impressed me as an honest and conscientious man and I have no doubt whatsoever that Somerton was given an opportunity to answer the charges in the Misconduct Report, and indeed his answers are indicated on the report.

Mr. Taylor stated that he does not necessarily write down everything that is said by an inmate, but he does put in the report the gist of the inmate's answers.

He stated that Somerton did not ask to see a doctor, nor did he complain about his treatment at the hands of correctional officers. The fact that he could have, but did not, does not, of course, prove that there was no assault.

In answer to a question by Mr. Zifkin, Mr. Taylor indicated that Boakes did not appear before him in person as he was off duty when the hearing was held. He therefore did not question Boakes and proceeded on the basis of Boakes's written report.

SOMERTON SUMMARY

By his own admission, Dassy used unnecessary and excessive force on Somerton. This was fully corroborated by other witnesses. I accept the evidence that Stafford also used unnecessary force on Somerton. I find that neither Wilson nor Boakes struck Somerton, as alleged by Dassy. The inmate himself made no such claim against these two officers. Nurse Mannerholm attempted to corroborate Dassy's allegation against Wilson. For reasons earlier stated, and her estimated time of observation being limited to one second, I cannot accept her evidence against Wilson. I further find no complicity or acquiescence on the part of Wilson with reference to the assault on Somerton. The only criticism I have of Wilson in this matter is that he did not make a report of the assault to the Superintendent. If line officers know that in the future a report will automatically be filed with the Superintendent in all instances where unnecessary use of force on an inmate is a matter in issue, I am satisfied that there will be fewer incidents. Whether or not the claim is substantiated is a matter for the investigation and decision of the Superintendent.

The Finnis Allegation

"I observed he had what looked like a growth in his stomach, sticking out, oh, a good eight maybe nine inches . . . and I presumed it was a hernia or growth of some kind in his stomach." (Gary Dassy)

"... if I had my shirt off you could notice it. It was about a half an inch." (David Finnis)

EVIDENCE OF GARY DASSY

One of the allegations mentioned by Dassy before the Commission involved an inmate named David C. Finnis.

Dassy said that Finnis was in 1 hospital dormitory, just off the rotunda to the north of Corridors 1 and 2.

Dassy said the Finnis incident occurred about 10 minutes after midnight on a Sunday morning towards the end of June or in the first week of July 1974.

Dassy was asked what duties he was performing at the time and described them in a Figaro-like manner.

A. It was the midnight shift and I had Corridors 1 and 2, 3 and 4, 5 and 6, kitchen dormitory, and TAP room.

MR. BYNOE. That sounds like the whole western part of the jail?

A. It was, sir.

Q. Is that it?

A. Yes, sir.

Q. Were you the only officer on duty that night?

A. Yes, sir.

The 1A hospital dormitory was also included in Dassy's Barber of Seville scenario.

The kitchen dormitory was in the basement of the old building.

Dassy stated that he was on his way back to the main floor of the old building, having passed by the old segregation cells that were in the basement of the old building, and that just before he started to ascend the stairway to the first floor he heard "hollering and shouting".

Q. Did you make out whether it was a male voice or female voice?

A. It was a male and female voice, sir.

Q. All right. As a result of that, what if anything did you do?

A. I kept walking, kept walking coming up the stairs, and as I was walking up I could hear the nurse on duty, Gabrielle Klein . . .

Q. You were able to tell, from the distance you were at, that the voice was the voice of Gabrielle Klein. Is that right?

A. Yes, sir.

At that time, Dassy said, he was unable to identify the male voice.

Dassy stated that he heard nurse Klein say, "I don't care what kind of pain you have, if you don't shut up, I will give you more [deletion] pain than you have ever had in your life. I wish there was a guard here so I could get you out and put you in the hole."

When he came up to the main floor he saw nurse Klein outside the grille of the hospital dormitory. Nurse Klein saw him and said, "Mr. Dassy, I want this man out. I want to put him in the hole." The reference was to Finnis, who was "lying in his bed or sitting up in his bed screaming at the nurse that he was in pain".

Q. He said "I am in pain"?

A. Yes, sir. Klein wanted me to take him out. . . . I told her she'd have to go to see [C.O. 4] Donald McKay.

Q. Who is he?

A. He was the chief that night, sir.

Q. And why did you tell her she would have to see him?

A. As far as I was concerned she doesn't tell me what to do in that jail.

Q. And who was McKay then?

A. He was the sergeant on duty that night.

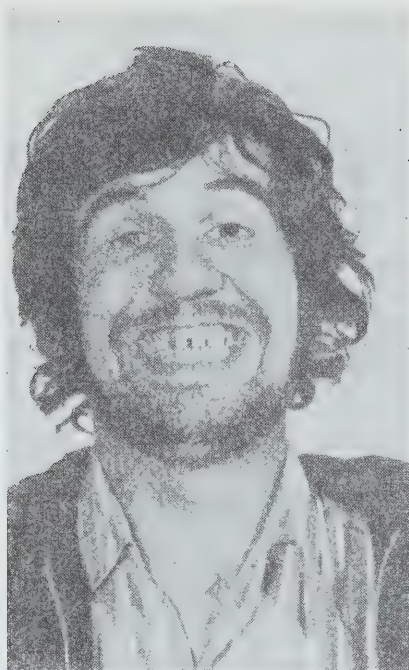
Q. Your superior officer?

A. Yes, sir.

Q. In charge of the shift?

A. Yes, sir.

Dassy related that he remained at 1A hospital dormitory while nurse Klein went to the Chief's office to see McKay. Dassy said he told Finnis to



David Finnis

get himself dressed because he was taking him out. "He said, 'I don't care what you do with me, I don't care any more.' He said, 'I'm in pain.' I said, 'That is not my problem, you have to come out.'"

Q. Before you brought him out you made an observation?

A. I observed he had what looked like a growth in his stomach, sticking out, oh, a good eight maybe nine inches. . . . And I presumed it was a hernia or growth of some kind in his stomach. . . . And I could see that with something like this a person would be in pain, so I didn't do anything to him. I just told him to get dressed and come on out. . . . He was reluctant to come out but he did come out. He was upset, quite understandably, I guess.

Q. What did he do or say to indicate that or convey the impression that you knew he was upset?

A. That he had only a few years to live.

Q. Who said that?

A. Finnis. I didn't know what he meant by a few years to live. I found out later, but there was that growth on his stomach. And he had to be in the hospital dorm for some reason other than — he could not have been malingering.

Q. So he indicated that he'd come out and he did come out?

A. Yes, sir.

Dassy stated that he left Finnis standing in the rotunda and went to the Chief's office.

A. Klein and McKay were . . . talking in the Chief's office. I cannot remember

exactly what Klein was saying to Sergeant McKay because as I walked in she shut up. By this time I was pretty mad myself at what she had pulled with this fellow here and I told her.

Q. What did you tell her?

A. That she was a [deletion] idiot. That if she couldn't see somebody like that was in pain, and even if she didn't believe the pain, all she had to do was go to the surgery and get two blanks, two aspirins, two sugar pills, anything, crush them, take them back to the guy, say "Here you go". And psychologically he just might have gone to sleep.

Q. Now you use the term blanks, what does that mean?

A. The jail has them. They are blank capsules with nothing but sugar compound or something like that. . . . You say "I phoned the doctor and he said you could have this", and usually it works.

Q. Now, after you asked her, why she had not done that? Did she make any reply?

A. I did not wait for a reply from her because I was damn mad at her. . . . I was . . . left holding the bag . . . and calming the guy down.

Q. Was anything said to you by Sergeant McKay or by Miss Klein after you —

A. Sergeant McKay said, "Do you think you can do anything with him?" I said, "I can try to frighten him into calming down. I don't think he is in a position right now that he is going to understand anything but maybe a threat." He says, "Well, go and try." And this time Klein took off, I do not know where she went to.

Q. Then did you and Sergeant McKay go back into the dome?

A. Yes, we did, we went out into the rotunda.

Dassy stated that in the rotunda, when McKay and he came to Finnis, he was "in a very uptight mood. He was upset over what the nurse had done and said to him, and he was saying that he had only a few years to live. He couldn't care if he died now or later. It didn't make any difference to him. I tried to frighten him into keeping quiet . . ."

Q. How did you do this?

A. Oh, I threatened him — something like: "I'll pluck your eyes out if you don't shut up and go back into the hospital dorm and go to sleep." With that he got very upset, and he lunged at me.

Apparently Dassy's "psychology" did not work this time. He stated that there were "three, maybe four other officers around by this time when Finnis lunged for me. He started to rake my back with his hands."

Dassy then related, "I then bent him over by forcing myself against him and putting him over my knee. At that point he started to holler, and at 12:00 to 12:15 at night he was quite audible all over the jail. I put my hands over his mouth and nose for approximately 30, maybe 40 seconds, until he just about passed out."

Q. The manner in which you were holding him had the effect of shutting off his wind?

A. Yes, it did, sir. By this time I could see there was no fight left in him, so I let him go, and he stood up, and I said: "Are you going to the segregation cells now quietly?" He says yes, he was. He was then taken over there by myself, and Sergeant McKay.

Dassy said that Finnis was taken to segregation without incident, and that he was not charged. "I believe he was only in the segregation cells for a day or two until he had calmed down himself."

Although Dassy was of the opinion that Finnis had been taken to 1B segregation, the entries for the 3B segregation log indicated that Finnis was placed in 3B segregation "N.O.P." (not on punishment).

Mr. Carter, in his cross-examination, asked Dassy:

Q. And it wasn't until he attacked you that he was restrained?

A. Yes, sir, and he was restrained. There was no force whatsoever used on the man.

Q. All right. Only such force as was necessary in order to restrain him?

A. Yes, sir.

Q. All right.

A. And without injuring that protrusion in his stomach.

EVIDENCE OF DAVID CHARLES FINNIS

At the time of giving evidence on March 17, 1975, Finnis was 27 years of age. He was born in England and was brought to Canada when he was eight. He had completed Grade VIII education in Toronto and during periods of incarceration had completed Grades IX and X. His record dated back to 1964 and included a charge of robbery with violence for which he was sentenced to a five-year term. He was admitted to the Toronto Jail on June 16, 1974.

He said that at the time he entered the jail he had a slight rupture, and some bruises which he claimed to have received as a result of an alleged beating in a police station. He stated that the rupture was in the form of a bulge in his upper abdomen which stuck out "maybe half an inch". He said he wore an abdominal support, presumably prior to the incident that he alleged occurred in a police station. He also said that at the time he entered the Toronto Jail he had other injuries, which he described as follows: "Both my arms were pretty sore, and my hand was sore, and one of my toes was sore, and they said I had a slightly damaged kidney which they sent me to St. Mike's Hospital for. I stayed there about a week and a half, getting treatment and that."

Q. This was in the middle of June?

A. Yes.

Q. And then you went back to the Toronto Jail?

A. Yes.

Q. What was the condition of your nerves?

A. Well, they weren't all that great. I was coming off drugs and drink.

Finnis said that he went to St. Michael's Hospital the same day he entered the Toronto Jail, June 16. He returned to the Toronto Jail, according to the medical records, on June 23. He also stated that he had "hypertension and everything". He indicated that this meant, "The nervous system, and something with your blood pressure rising, and that, and I start shaking pretty bad, and I start getting pretty bad pains just like I was having a stroke, or something. That's all I could feel."

When he returned to the Toronto Jail from St. Michael's Hospital he was placed in 1 hospital dormitory. The incident related by Dassy, he agreed, could have occurred about July 6.

The events leading up to the incident were related as follows:

Q. And you were in 1 dorm, and you say you started to have hypertension?

A. Yes. I didn't know at first that was what I was having because I know when I was in the dorm I was shaking pretty bad, and I was having bad pains, and I didn't know what was happening. One of the inmates in there called Gary Dassy over to get the nurse, and to find out what was wrong. I didn't really want to see anybody so, then, they came over and got a nurse, and I remember she asked me —

Q. What did she do? Did she come into the dormitory?

A. She didn't come right into the dormitory, but the grille — talking through the grille, and she asked me if —

Q. Now you will have to tell us exactly what happened.

A. She asked if I pissed the bed.

Q. In those words?

A. Yes. I said, "No."

THE COMMISSIONER. Were those her first words to you?

A. No, I don't think so. She said at first, "What's wrong?" or "Is something the matter?" I really can't remember what she said. I remember that quite clearly that she said —

MR. MCRAE. Do you remember what you said to her?

A. I says, "No." I told her I didn't. She says, "You are not having an epileptic seizure." I didn't even say I had an epileptic seizure.

Q. After asking you if you had wet the bed, she said: "You are not having an epileptic seizure"?

A. Yes.

Q. And what happened then?

A. Well, I got pretty mouthy with her, and I told her: "You nurses and doctors in here don't know [deletion] from a hole in the ground", and she didn't like that, and that's when she called Gary Dassy —

Q. She didn't like you telling her she didn't know very much?

A. No.

Q. Did she say anything to you?

A. She didn't say – I don't remember what was being said. Everything was happening too fast at the time, and I don't really know what she said. . . .

Q. What happened?

A. Well, nothing happened right off the bat.

Q. You had clothing on?

A. Like, I had to put my clothes on before I went out.

Q. Who asked you to come out?

A. Gary Dassy asked me to come out.

Q. How did he do that?

A. Well, he just told me to get my clothes on and come out of there. Something like that.

THE COMMISSIONER. When you say "put your clothes on", were you wearing pyjamas?

A. No, I was just in my underwear.

MR. MCRAE. You put boots and pants and shirt on?

A. Yes.

Q. Did you have any discussion with Mr. Dassy about your condition, and what you were going to do?

A. I can't quite remember if I did, or not.

Q. Was there any indication at that point where you were going to be taken, or why you were taken out?

A. No, not right off the bat. I felt I was going to segregation. I felt this.

Q. Go ahead.

A. So, they took me out to the dome. Nothing happened, and the chief officer was on that night, and he come over, and I remember him telling me to go back to the dorm.

Q. The chief officer, you mean in the white shirt?

A. A white shirt was on that night ———

Q. Did you have any conversation with Mr. Dassy after you came out of the dormitory before Mr. McKay came up?

A. No, I don't think so. I am not too sure of it.

Q. What happened when Mr. McKay came up again?

A. Well, myself, I think he said, "Go back to the dorm, no more lip out of you tonight." So I was told to go back to the dorm at that time, and I don't know, he left – I don't really know what was happening at that time, I was still pretty up tight, and the guards were pushing me ———

Q. I'm sorry, you are dropping your voice. You don't remember too much but you were real up tight and Mr. Dassy was pushing you, did you say?

A. He was pointing at me.

Q. Sorry? Pointing at you?

A. My chest. I remember I flipped out on him at the time.

Q. Was he speaking to you at the same time he was pointing at you?

A. Well, he was speaking to me – I can't . . . something about a long-haired punk with a beard, and all that. And I just flipped out on him.

Q. He pointed to your chest – did he just point towards you? Or did he touch you?

A. Just touched me on the chest. It wasn't very hard, or anything like that. . . . I just flipped out on him.

Q. Flipped out?

A. I don't know what really happened after that.

Q. What did you do?

A. I don't really know what I did.

Q. Did you hit him?

A. I am not too sure.

Q. And then what happened?

A. Well, I don't know whether he blew a whistle or something like that, but another guard showed up.

Q. He blew a whistle?

A. That's what I think, but I'm not too sure. I have possible doubts on it, but I know other guards showed up at the time of this happening. And I was down on the floor. And Dassy, I think he had his hand over my nose or mouth or something.

Q. Over your nose, did you say?

A. I remember I was having a hard time breathing at the time. I had to hold my stomach at that time, I had a blow or something, but I don't know.

Everything happened so fast.

Q. Did you say Mr. Dassy had his hand over your mouth or your nose?

A. Either that or I could have had something in my throat, I really don't know.

Q. You were having trouble breathing?

A. Yes.

Q. Did anything else happen?

A. I was on the floor.

Q. You were on the floor? You mean lying on the floor?

A. Yes. . . . I felt like I got a blow or something in my stomach. I wasn't watching what was happening.

Q. All right. Can you describe what any of the other correctional officers did, if anything?

A. No.

Q. Nothing?

A. No.

Q. Did you lose consciousness at all at this time?

A. No. I didn't lose any consciousness. But I was having a hard time breathing.

Q. What happened, did eventually Mr. Dassy let you breathe again?

A. Yes. I know after that they took me to segregation.

Q. You say you felt a blow to the stomach?

A. Yes.

Q. Do you know what kind of a blow or who gave it to you?

A. No.

Q. How did you get up off the floor?

A. I'm not too sure how, really. I remember I was walking down in the basement, going down there I was walking down there.

Q. Do you remember going through the tunnel?

A. Yes.

Q. Could you tell us what correctional officers were with you at the time?

A. I know Gary Dassy was with me at the time. I think there was – I think it was the same officer that was on that night. The sergeant that was on that night,

I think he was with me, but I am not too sure.

Q. Sergeant McKay?

A. Yes, and a couple of guards. But I can't place them now, their faces.

Q. Have you been given an opportunity to look through Exhibit 18, which is in front of you, in an attempt to pick out any correctional officers —

A. Yes.

Q. — that were around you in the rotunda at the time?

A. I went through it, but it's a waste of time to try and pick somebody out.

Q. You couldn't pick anybody out?

A. No.

Q. Anybody other than Mr. Dassy and Mr. McKay?

A. Yes.

Q. All right. You were taken to segregation, did you say?

A. Yes. On the third floor.

Q. I think we should deal in a little more detail with what happened back in the dome. Did you say anything to Mr. Dassy before you, as you said, jumped him? Or did he say anything to you other than what you have told us?

A. No, I can't remember anything.

Q. Did you overhear anybody say anything while you were being subdued, if I could use that expression?

A. No.

Q. Was this protuberance in your stomach obvious at this time? The bulge in your abdomen?

A. I noticed it, if I had my shirt off you could notice it. It was about a half an inch.

Q. Did anybody, any guard say, "Watch his stomach. Watch his stomach."?

A. Oh, yes. I remember that now. I remember that. Somebody did yell that.

Q. When was that?

A. This is when the scuffle was going on.

Q. Just before or after you felt a blow to your stomach?

A. I'm really not too sure now, if it was before or after. All I can remember is — I remember them saying, "You're going to go down on your own or you're going to be dragged down."

Q. Who said that?

A. I think it was Gary Dassy.

Q. Were you resisting at this point? Or attacking anybody yourself?

A. The only one I know of was just Gary Dassy.

Q. You were still struggling and fighting?

A. I remember I was still struggling on the floor. Somebody held my feet and my arms, that's when everything was going on. It all happened so fast.

Finnis was not sure whether it was a blow to the stomach or that he was being held to quieten him.

Up to this point, Finnis did not implicate Miss Klein or confirm the allegations made against her by Dassy. Dassy may well have had some hostility towards Miss Klein, and, indeed, his evidence seemed to point that way. Nor did Finnis make any allegation against McKay, and he was rather indefinite about any claim against Dassy, other than that Dassy had apparently re-

ferred to him as "a long-haired punk with a beard". This, in the language of Finnis, caused him to "flip out at Dassy". Language of the kind Dassy used is not professional and would tend to cause a hypertense inmate to react.

As for McKay, he was trying to "cool out" the situation by telling Finnis to go back to the dormitory, adding: "No more lip out of you tonight." It is indicated that McKay walked away giving this order. An experienced line correctional officer would have been able to humour Finnis along and lead him back into the dormitory without any further incident, but apparently he was being pushed back and this caused another blow-up, particularly with the further aggravation of Dassy's uncomplimentary reference to Finnis, and to this was added Dassy's pointing at Finnis's chest.

Certainly, a senior correctional officer is entitled to leave some responsibility to line officers, but under the circumstances it is unfortunate that McKay did not personally see that Finnis re-entered the hospital dormitory rather than leaving this to the discretion of Dassy.

On the medical aspect, I cannot help thinking that had there been a doctor on duty 24 hours a day, as there should be in a jail with a population at times in excess of 800, including a large number of disturbed persons, he could have tranquilized someone such as Finnis by injection, or at any rate he could have given him some sedation.

As for Dassy clamping his hand over Finnis's nose and mouth, thereby cutting off his breathing, this might be an effective way to quieten an inmate who would otherwise disturb sleeping inmates, but it could also be a rather dangerous procedure, particularly if administered by a correctional officer who was somewhat agitated. In the absence of medical supervision, such a method should not be resorted to by correctional officers.

Finnis said that while he was in segregation he made no complaint, but a correctional officer put in a report to surgery and then a senior officer sent Finnis to see Dr. Dickinson.

A. He did a medical on me . . . and he noticed that I had a bruise on my stomach.

MR. MCRAE. How do you know he noticed that?

A. Well, he had me take my shirt off and so he noticed that there was a bruise on my stomach and he was asking me — I remember he asked me, where did you get that from, and I said, I don't know. It could have happened in the scuffle in the dome. I said I am not too sure . . . I was still shaking at the time and he gave me a needle to settle me down and he told me to go back to the dorm.

A complaint was made by Finnis on admission that he had been assaulted by police officers prior to being brought into the Toronto Jail, and this allegation should have been communicated to the Police Complaint Bureau for their investigation and report back to the Toronto Jail.

It is a matter that the Superintendent would be interested in, as well as the proposed Toronto Jail Council, for, if a person makes an allegation of any injury prior to admission to the jail, this should be fully investigated, because it might have some bearing on the medical treatment the inmate should

receive at the Toronto Jail, and it may become important if there is any allegation of injuries while in the Toronto Jail.

For example, in the note of Dr. Dickinson, made on July 8, it was indicated among other things that there was a bruise over a hernia incision. There was questioning as to how it was obtained.

Dr. Dickinson had noted on June 28 that Finnis had "pain over incisional hernia" and that he could not sleep.

The episode in question occurred during the 11:00 p.m. to 7:00 a.m. shift, Saturday, July 6 to Sunday, July 7, 1974. Dr. Dickinson saw Finnis on Monday, July 8, and made the following note: "Tremor - has bruise over incision. How obtained? Abdomen negative otherwise. No pain today. ? Withdrawal symptoms." It was indicated that sedation in the form of Valium was prescribed.

According to the nurses' book, the following note was made concerning Finnis by nurse Klein: "Called guard as inmate was having 'seizure' - arrived, inmate was drinking H₂O [water]. Other inmates were upset re this behaviour. Said it happened earlier today. Inmate stated doctors all felt he was OK. I remarked that perhaps it was his nerves. He in turn started using foul language [deletion]. Chief notified as he refused to settle down. Removed to B landing overnight."

A notation by Dr. Dickinson the next day indicated that he was following up Finnis's case. The notation read: "Seen at my request 'more settled now' wants abdomen support. ? what use it is. May have support."

There were further notations, including one on July 19 by Dr. Dickinson that "Hernia 'getting larger' reduces on reclining. To wear his appliance."

On July 24 the medical report indicated that Finnis went to court and did not return to the Toronto Jail.

As the medical services at the Toronto Jail do have a bearing upon the duties imposed upon the correctional officers at the jail, the medical aspect of Finnis's case has been considered. If an inmate was not receiving proper medical attention, this might put a heavier onus on the correctional staff.

On admission to the Toronto Jail in June 1974, Finnis had been placed in 1 hospital dormitory. He would have closer medical attention there than in a regular corridor. However, he was, apparently, disturbing the other inmates. According to McKay he was to have been returned to the dormitory after McKay had spoken to him and warned him. Then there was the further altercation which may have been prompted, in part or wholly, by Dassy's method of dealing with Finnis in attempting to return him to the dormitory. Finnis was in such an agitated state that he may have caused further problems in the dormitory that night. In any event, he was removed to segregation, presumably for overnight. It may have been due to some lack of communication that he was not seen by a doctor on Sunday. Sunday was not a normal working day for the doctors at the Toronto Jail.

Mr. McRae asked Finnis about the cause of his injury.

MR. MCRAE. I am not too sure, Mr. Finnis, did you say this injury to your stomach was caused by the incident in the dome, or do you not know?

A. I don't know.

Q. You don't know. Would you say excessive force was used on you, or you were mistreated by any of the correctional officers?

A. At any other time?

Q. No, involving this incident?

A. No. I really couldn't say, because I know I was the one that put more force than anybody else.

Q. Did Mr. Dassy react properly?

A. All he said to me was: long-haired punk with a beard, and everything; so, that was about the only time I ever saw him step out of line.

Q. That is the only reason you would have to criticize him?

A. Yes. . . .

Q. But you don't criticize his treatment of you, with the possible exception of the criticism of the medical attention you had?

A. More or less thrown around with the medical attention – not getting proper treatments.

Q. Is there anything further you can help us with?

A. No, sir.

Q. Have you ever been mistreated on any other occasion?

A. No, sir, never.

Finnis was cross-examined by Mr. Evans.

MR. EVANS. Well, can you say for certainty, then, that . . . you received the bruising while you were in the dome area?

A. I feel this is where it has to have happened.

Q. You feel that, but do you know for certainty this is where it . . . happened?

A. It felt like I got a blow in the dome. I can't say if I got it from a fist, or blow, or knee. I don't know who give it to me, or anything.

Q. Can you recall what point in time you felt this blow?

A. I felt like when Gary Dassy was trying to put me unconscious, when I was suffocating – no air and that. That's about the time I felt like it happened around that. I don't know who did it or what. . . .

Q. Well, during this altercation with Mr. Dassy, could you have felt a pulling on that area as opposed to a blow?

A. Yes, it felt like a really sharp pain that went through there. . . .

Q. And you couldn't see anybody else in that immediate area?

A. There were other guards around me but I wasn't facing them at the time when it happened.

Q. How close were these other guards to you?

A. They were holding me down, as far as I know. I wasn't paying any attention to them. Everything was happening so fast, I just don't know what really happened.

Q. So it could have been a pain that arose, then, from working yourself around while being held down. Is that right?

A. It could.

Q. And you did not see anything that looked like a blow directed in your direction?

A. No.

In view of Finnis's allegation that he was assaulted before entering the Toronto Jail and his other evidence, it is difficult to place the blame for the abdominal injury directly on Dassy or any other correctional officer.

Finnis's evidence was somewhat indefinite about any observations he might have made of bruising prior to July 6. He said he thought he looked at his abdomen the previous day and that he had not noticed any bruising at that time.

EVIDENCE OF OSLER BRIGGS DICKINSON

Dr. Dickinson was one of the doctors on staff at the Toronto Jail. He described an "incisional hernia" as "a bulging of the abdominal content through a former incision". He said he was able to see a large incisional hernia when he examined Finnis on June 28. He was unable to recall whether the bruise over the incision which he noted on July 8, had been present when he saw Finnis earlier.

As for his July 19 note, "hernia getting larger", he indicated that since this note was in quotation marks it was Finnis's observation rather than his.

As for any complaint by Finnis about medical treatment, Dr. Dickinson stated, "Well, he was never very pleased with anything as far as I can remember."

MR. SALEM. Doctor, are you saying there was no treatment that you would have proposed for somebody with a hernia like that?

A. Operative?

Q. Any kind of medical treatment?

A. Well, I think he had all that was needed. These operative treatments are not good for this because [of] the lack of tissue to deal with it.

Q. All right. So that you felt that that bulge or hernia wouldn't have been assisted by any operation?

A. I don't think it would have been wise to recommend it.

Q. All right, so that's out and there is no medical treatment then? . . .

A. No, no, apart from the support that he asked for.

Q. But there was a query, and in your professional opinion, he didn't need the support?

A. I didn't think it would do him much good.

Dr. Dickinson was questioned by Mr. Evans and the transcript reads as follows:

Q. Now, Doctor, in your note of July 8th, if he had told you at the time where he obtained the bruise or the source of the bruise, would you have made a note of it?

A. Well, I would have likely called the custodial people.

Q. I see.

A. And I would have made a note of it here, of the injury.

THE COMMISSIONER. You said you would have called the custodial people. Who do you have in mind? . . .

A. Well, the senior officer on duty.

It may be that the use of the word "likely" was a figure of speech, for certainly any time that an inmate makes an allegation to a doctor that he has received injury at the hands of any correctional officer or officers, this matter should definitely be reported to the senior officer in the jail at the time, and reported to the Superintendent at the earliest possible moment. This should be done whether or not the doctor has any doubts as to the validity of the allegation. It should be a routine matter, and the doctor should not be placed in the position of having to make a judgment about the reporting. Reporting should be automatic.

EVIDENCE OF GABRIELLE KLEIN

Nurse Klein said that while she was at her nursing station, which was next to the medical examination room on the main floor of the old building and close by the 1A hospital dormitory, she received a telephone call from Dassy.

MR. MCRAE. What information did you get from Mr. Dassy on the phone?

A. That the inmate was having some kind of seizure.

Q. And the inmate was located where?

A. In 1 dormitory.

Q. What did you do?

A. I went to the area.

Q. To 1 dorm?

A. That's correct.

Q. Who did you see when you got there?

A. Mr. Dassy, and I saw the inmate in 1 dormitory.

Q. What happened when you got there?

A. The inmate was drinking water, and I asked what the problem was . . . because he did not appear to be in any distress, and he was upset, and the other inmates in the dormitory were upset because apparently he had been sick all day, and previous nights he had kept them up, and they had more or less been looking after him. This is the story I got. He asked for medication, and I said there was nothing for him; that he had had his medication, and he became verbally abusive.

Q. I see. Well, did you see anything about him that would corroborate that he was feeling unwell?

A. Well, the only thing that I saw was that his stomach was enlarged, and



Gabrielle Klein

that he had a hernia. . . . I told him that he should calm down, and if he was going to continue to make a disturbance in that area he would have to be removed into segregation for his own protection.

Nurse Klein said that she then went to the Chief's office and McKay came back with her.

Q. When you returned to the dome with Sergeant McKay, what did you see – you say Mr. Dassy was there?

A. I saw Mr. Dassy there and Mr. Finnis, and Mr. Finnis was upset and yelling, and there were a few other guards there. But he calmed down when Mr. McKay talked to him.

Q. Was there a struggle?

A. There was a physical scuffle, but nothing that I would say, you know, a struggle, no. . . .

Q. Could he have been on the floor without you seeing him, either before you arrived or after you left?

A. Well, sir, he could have been, but to my knowledge I did not see him on the floor.

Q. Did you see Mr. Dassy – and Mr. Finnis and Mr. Dassy are in agreement on this – did you see Mr. Dassy with his hand over Finnis's mouth and nose so he couldn't breathe, or had difficulty breathing, to subdue him?

A. I really don't recall.

Q. Did you see anybody hit, or kick, or punch him?

A. No, I did not see anybody hit or throw any blows.

Q. This trouble you described, you really haven't described it?

A. Well, it was just, like, almost like just taking a hold of his arm, you know, both arms, and taking him to the segregation area. You know, he shook his arm

at one point, but you know, if this is a struggle – I don't recall him being hit or being on the floor.

Q. If that had happened, you would recall it?

A. If he had been struck or landed on the floor, yes, I would recall it.

Nurse Klein said that she saw Finnis at some later time after he came back from segregation and he apologized for swearing at her earlier. She stated that on the night of the incident she had noticed the bulge because Finnis's shirt was open "and it was noticeable".

Q. Did you see anything that happened in the dorm that could have caused it to become bruised?

A. I really – no, I can't really say, because I didn't see anybody strike a blow.

Q. Did you ever hear any conversation?

A. Mr. Finnis was extremely upset.

Q. What did you see him doing?

A. He was saying words to the effect that he didn't have long to live anyway, so he didn't care if he was put in segregation or not. Words to that effect.

Q. Did you hear Mr. Dassy say anything to him?

A. I cannot recall.

It was not necessary to call McKay as a witness, since the gist of his evidence had already been dealt with. Mr. McRae reported that the Commission's investigators interviewed five correctional officers who were on duty at the time. None of them had anything to add. "It's not really a case of whether it was a complaint made by Mr. Finnis, except a very vague suggestion that something happened to his hernia area which we could not get any corroborative information whatsoever on, and under those circumstances those are all the witnesses that we intend to call."

Under the circumstances, and in view of the allegations made by Dassy, it was necessary to bring this incident before the Commission. In view of the evidence adduced, I was in agreement with counsel that it was unnecessary to call any further witnesses.

FINNIS SUMMARY

Although Dassy's handling of the Finnis incident might be open to criticism, it falls short of establishing any use of unnecessary force. Finnis indicated that he himself was probably guilty of using the most force. Nor, in my opinion, did Finnis fail to receive proper medical or nursing attention. Extending the medical services to a 24-hour coverage is once again recommended.

The Jones Allegation

"He [C.O. 2 George Pano] swung Jones around and into the corner of the wall . . . I grabbed Pano, sir, and threw him back against the grilles and I hit Pano, sir." (Gary Dassy)

*"My memory fails me very terribly. I cannot recall that at all."
(C.O. 2 George Pano)*

" . . . there is a percentage of good ones (correctional officers at the Toronto Jail) and a percentage of bad ones. Probably about 99 per cent good and one per cent bad." (Donald Jones)

"I mean, what is the guy, some kind of a loose goose?" (Donald Jones referring to Gary Dassy)

"You start questioning your fellow officers on occasion, then you might as well pack in the whole works." (C.O. 1 George Thompson)

Donald Jones was an additional inmate who Gary Dassy stated was assaulted. Again, evidence would indicate that Dassy was a party to an attack at the same time that he attempted to implicate another officer. This other officer was C.O. 2 George Pano, who denied any involvement. Once more the Commission was faced with conflicting evidence.

EVIDENCE OF GARY DASSY

Dassy stated that Jones came into the Toronto Jail about the middle of July 1974 and was "high on drugs". Dassy saw Jones for the first time on this occasion in 3 hospital dormitory.

Dassy indicated that his assigned area at the time comprised Corridors 3, 4, 5, and 6, on two floors in the west wing of the old jail. Dassy said that a complaint had been made to him by one of the inmates. He said the inmate told him "to get Jones out of the dormitory. The rest of the inmates, including himself, were going to take care of him if I didn't get him out. He was spitting in the tea, urinating, and taking their meals off of them and eating them. So I phoned surgery and I phoned the Chief's office and I told them what was going on regarding Donald Jones."

MR. BYNOE. Did you have an opportunity of seeing Donald Jones at that time?

A. Yes, sir.

Q. What observation, if any, did you make with respect to his condition?

A. He was high, or still on drugs, sir. He had no idea what he was doing.

Dassy explained that Jones "was in a confused state, sir. He had problems with his feet, as I recall now, sir, and he couldn't wear his shoes. They were cut, I believe, sir."

MR. BYNOE. Now then, having had this information and made your observation, what did you do about it?

A. I phoned the surgery. I think Nurse Klein was there and I believe [C.O. 4] Donald McKay was Chief that night, sir.

Q. So you phoned the surgery and spoke to Nurse Klein?

A. Yes, sir.

Q. Then you phoned . . . the Chief's office? . . .

A. I told him what Jones was doing and what the other inmates were going to do to him, and we agreed that he should go to segregation, not as punishment but for his own protection really.

Q. Yes?

A. Until he was off his drug trip.

Q. By that are you indicating that he was impaired or intoxicated by drugs?

A. Yes, sir.

Q. All right. Now then, what happened?

A. [C.O. 1] George Thompson and myself took him over to 2B landing. I took Jones out and explained it to him, where he was going, that he wasn't going on punishment. He was upset at first.

Dassy said that Jones was then taken to segregation and "on the way to the basement I gave him a cigarette and we were talking as we went".

At 2B segregation they were met by Pano and, according to Dassy, "Pano asked me what I was doing with Donald Jones over there, and I told him. I said he had been put in segregation, medical segregation, he's coming

down off a drug trip. I don't think I finished what I was saying before Pano hauled off and hit Jones in the face."

Q. Was there anything said or done by Jones towards Pano before the blow was struck?

A. No, sir.

THE COMMISSIONER. How did he hit him?

A. With a closed fist in the face, sir, about three times, I believe, before I could get into it, you know, throw him back.

Q. Where in the face was he struck?

A. In the front of the face, sir, like around the eyes and nose part, sir.

MR. BYNOE. What degree of force would you say was used?

A. A fair degree, sir. Jones remembered it. He told me about it afterwards. He felt it.

Q. What effect, if any, did the blow seem to have on Jones after he received it?

A. None, sir, because of the state he was in through the drugs.

Q. All right now, you saw Pano hit Jones?

A. Yes, sir, I did. . . .

Q. Was Jones walking by himself at this time?

A. Yes, sir. Jones was just finishing the cigarette I had given him.

Q. Where was he walking in relation to you, and was there anyone else with you?

A. Yes, [C.O. 1] George Thompson.

Q. You and Thompson and Jones were in the corridor?

A. Yes, sir.

Q. And Pano was in the corridor. Where were you and Thompson in relation to Jones when the blow was struck?

A. About here. Pano more or less took over. He was going to put him in a segregation cell.

Q. Where were you?

A. I was right behind Pano.

Q. You were behind Pano?

A. Yes, sir. And Thompson was beside me.

Q. Yes. And where was Jones?

A. Jones would be in front of Pano.

Q. All right. Now then the blow was struck, and what, if anything —

A. He swung Jones around and into the corner of the wall —

Q. What if anything did you do after the blow was struck?

A. I grabbed Pano, sir, and threw him back against the grilles and I hit Pano, sir.

Q. All right. Where did you hit him and what with?

A. Hit him with my fist, sir, in the stomach.

Q. Yes, and did you say anything to him?

A. Yes, sir. I told him the next time he touched any [deletion] inmate . . . that I was taking to the segregation cell . . . he was going to have to deal with me next because there was no reason to touch Jones whatsoever.

Q. What if anything did Pano do or say after that?

A. Pano kind of looked at me, sir, as much as to say, I don't know — just what

his thoughts conveyed to me who the hell are you.

Q. He didn't say anything?

A. No, sir. He was kind of shocked.

Q. Well how many blows did Pano strike with respect to Jones?

A. I would say three, sir.

Dassy was asked what Thompson did.

A. He was pretty mad at it too, sir, because he agreed, you know, that Jones had done nothing to warrant being hit.

Q. Well, I asked you what Thompson did?

A. He didn't do anything, sir.

Q. Did Thompson say anything either to Pano or to Jones?

A. No, sir.

Dassy was asked about the entry in the 2B segregation log book. He was under the impression that Pano had made the entry but the log itself revealed an entry by Dassy which read, in part, "Donald Jones admitted 2B Landing from 3 dorm IC surgery."

Q. Now Mr. Dassy, what does the notation "3 dorm IC surgery" [mean]?

A. Surgery had okayed Mr. Donald Jones into segregation because of the condition he was in, sir.

Q. Does that mean that you had some contact with surgery before you took Mr. Jones over?

A. Yes, sir, I phoned surgery.

Q. All right. Now you have indicated you spoke to a Miss Klein, a nurse. I believe?

A. I believe it was Miss Klein.

Q. All right, and is that who you were referring to when you indicated surgery?

A. Yes, sir.

Q. The nurses have authority, then, to permit you to take an inmate from one part of the jail to the other for medical reasons?

A. Yes, sir.

Dassy went on to say that Jones was put into a segregation cell.

Up to this point there are two matters calling for criticism. One is that an inmate was taken from a hospital area into segregation without being examined by a nurse or a doctor. According to Dassy, all he had was the permission of a nurse, obtained in a telephone conversation. Further, Dassy said that he spoke to "the Chief's office", but he was not sure to whom he spoke – it might have been McKay. Whoever it was, Dassy said, gave him permission to take Jones, an inmate, from a hospital area into segregation – without the accompaniment of a senior officer.

The recommendation has been made on other occasions, and is again made here, that a senior correctional officer should accompany an inmate into segregation, or at least be in charge of a detail that is escorting an inmate to segregation. The only exception should be where there is an emer-

gency and no senior officer is available. That was not the situation here.

Further, and it is my information that this is now done, there should always be a medical examination at the time of admission to segregation. In this case, a medical examination would probably have revealed that Jones was under the influence of drugs. He might therefore have been transferred to a different area. As of now, I hope such a case would be transferred to the medical wing, or the psychiatric wing, on the fourth floor, rather than to segregation.

According to the evidence of Dassy, Pano's striking of Jones was without provocation and without any rhyme or reason.

EVIDENCE OF DONALD WAYNE JONES

At the time of giving evidence, Jones was 27 years of age. He was born in Ontario. He completed Grade X and then took a trades course. He had had difficulty with the law since 1968.

With reference to the incident referred to by Dassy, Jones was admitted to the Toronto Jail in the afternoon of July 13 and was initially housed in 3 hospital dormitory.

Jones was asked about his physical condition when he entered the jail.

A. Well, it's rather ridiculous to say it, I was under the influence of Tuinol, which are sleeping pills. I was very, very low, tired, under the influence, that's about all I can say. I couldn't keep my eyes open. The effect they had on me is that you went to sleep, and when you are awake you want to eat.

MR. MCRAE. Had you been injured shortly before?

A. Yes. While I was still under the influence on the street I thought I was going to try and break into this place with no boots and without a shirt on. And I injured my toe on my right foot, I believe, and my shoulder up here [indicating]. I fell off about a three-foot ledge.

Q. You tried to kick something in with your bare foot?

A. Yes, I tried to kick a window in with my bare foot and I hit the bricks above it with my foot.

Q. You were under the influence of drugs?

A. Yes, I was.

According to the medical summary the complaints made on admission to jail were of a sore back and sore feet. Also, there were the notations, "no recent drug use" and "appears sleepy, rather tired". It is difficult to understand how there would be a notation of "no recent drug use", except that Jones says he may have told the doctor that. I would recommend that, when drugs might be suspected, there should be a detailed medical examination to ascertain whether the inmate is in fact under the influence of drugs when

he enters the Toronto Jail. If he is, then appropriate steps should be taken with reference to necessary medical or nursing attention.

As for Jones's recollections, after he was placed in the dormitory:

A. I know I never had boots on and I think one of the first questions I asked was, has anybody got anything to eat. . . . They have got a habit of saving the jam in, like, a Dixie cup, only it's much more, it's about like this [indicating], with a piece of paper and a pattie of butter. And there is a place to store it where the mice can't get at it. And the guards don't, as a rule, say anything. And just inside of 3 dorm there is, like, a ledge, probably where an old window was, and there was a loaf of bread up there sitting with four or five butters, and I remember I cleaned it out, I ate the whole thing, and then I went to sleep. And then I woke up — I don't remember whether it was for a meal or whatever, but anyway I went to sleep again and then I was ejected from there by Mr. Dassy yelling at me —

MR. MCRAE. I think there is some earlier evidence and perhaps there will be some more evidence, that it was because of your intoxication from the drugs that you were misbehaving, not violently, to other inmates.

A. I was, definitely I was, I wanted to eat all the food.

According to Dassy, Jones created a problem for the other inmates in the dormitory when he awoke and began to eat ravenously.

Q. You wanted to eat all the food?

A. I mean, you see you will eat things that you more than likely don't like, and they are good.

Q. So you say you were ejected by Mr. Dassy?

A. Well, I was asked to come out.

Q. Asked to come out from the dorm?

A. Yes. He told me to get my stuff, and all I had was a towel.

Jones said that he knew Dassy from before and apparently he was able to relate to him because he stated, "he seemed like an OK guy".

Dassy and other correctional officers against whom allegations were made were able to establish a rapport with certain inmates.

Jones had indicated that Thompson was not with them originally and joined them somewhere along the way. Jones confirmed that Dassy gave him a cigarette.

Jones thought that he was being transferred to a cell in the new building, not to segregation, the reason being, "Well, you have got to see a white shirt to get on charge, to be put in the segregation area, or you have got to want to ask for it, and I never done either one."

When Jones arrived at segregation he realized where he was and what was being done and he said his reaction was, "I fired my shirt on the floor, and I never done that before."

He then realized Dassy's perfidy. "As soon as I fired or threw my shirt, whatever you want to use, I turned around and asked what's happened. I figured all of a sudden here's my friend stabbing me in the back."

He also said that he then saw Pano. He thought "he was the guard on 2B landing" because he said that Pano did not walk into segregation with them and Pano was, at that time, sitting on the stool at the guard station outside the segregation cells.

Jones stated that he received two punches in the face after he threw down his shirt, and asked what was happening. These were from Pano and Dassy. Then, he stated, Thompson hit him in the stomach and he was knocked off his feet. One of the two punches that he received in his face, he stated, was from Pano and the other was from Dassy. As for Thompson's blow, he indicated that "it wasn't really even a punch" and that it was given mainly for show.

Jones admitted that he was "a little hot" at finding that he was going into segregation, and that although he threw his shirt on the floor he did not strike or threaten to strike any of the correctional officers.

Q. Was it the blows to the face that knocked you to the floor?

A. Well, sure it was. Sure. And boom, and I was under the influence of drugs too, and I had a sore foot, and I didn't want to put too much pressure on one foot. You know how it is. Well, you don't exactly know how that particular incident was, but I wound up on the floor.

Jones indicated that while he was down on the floor Dassy had a foot on his chest, restraining him from getting up, and Pano kicked him in the ribs. He said that Thompson took no further part in the proceedings other than later grabbing him by the arm and throwing him into the cell. "I literally got thrown into the hole bodily, and I felt, like it's a good thing the toilet wasn't in there or I would have been gone right now. Roger Maris [the baseball player] couldn't have done better, you know what I mean."

Jones also alleged that he got "severe beatings in the groin".

Q. In the private parts?

A. Exactly. Yes.

Q. Yes?

A. By Mr. Pano . . .

Q. You mean you got a beating in your privates?

A. That is right.

Q. What do you mean, with a foot or hand?

A. With the foot. With the foot.

Jones had some observations about segregation. He said, "I can't handle being segregated . . . and you yell and scream." He further complained that the mattress was usually taken away at 5:30 in the morning and it was "quite chilly over there. I think there is maybe a lot of people getting colds in there. What they do, they give you a mattress and because you are being punished they take it away from you. . . . You can run, like on the spot, to keep warm."

Jones was questioned as to his memory of the events, to which he replied, "I remember, you only have to get kicked once in the groin and you re-

member it, you know what I mean; and it wasn't once that I got, it was like several times."

Q. Did you suffer any injury, as a result of this incident?

A. I sure did.

Q. You described your testicles were swollen?

A. Yes. I had a broken lip, and it was bleeding.

Q. A cut lip?

A. Yes, and my feet didn't get any better as a result of the whole thing.

Q. Your feet were injured?

A. Yes, right.

Q. Anything else?

A. No, I can't say there was anything else.

The medical records indicated an attendance by Dr. Dickinson on July 15. The record read, "Pain all over. Abrasions over scapula and dorsum [shoulder and back]. Right foot injury to big toenail."

Dr. Dickinson indicated by a question mark doubt as to how Jones sustained his injuries. He prescribed sedation. There was a note on July 18, also by Dr. Dickinson, that Jones could return to the corridor.

Dr. Dickinson was not the doctor who saw Jones on his admission to the Toronto Jail, July 13.

Jones said that he was glad he was permitted to go back to the dormitory. "This was the good thing about it, they took me back, and I was able to apologize to all the people. It was the one thing I felt pretty good about."

Jones was also asked if he told Dr. Dickinson about having been injured by correctional officers, to which he replied, "He could see it." Admittedly, Jones sustained some injury to his foot during the "break in" before he was brought to the jail. There is the question of what other injuries he might have received at the time, or whether these additional injuries were sustained as a result of the alleged assault in the segregation area. Again, it is recommended that there should be forms for the examinations by the doctors of inmates in segregation and these should indicate whether there have been any allegations of injury at the hands of correctional officers and, if so, what injury is alleged, so that the doctor can examine for such injury and make a suitable record.

Jones related a conversation he had with Dassy about three days after the incident.

A. I think it was on a Tuesday, Tuesday morning. And he said to me, he said, "Why didn't you hit him? I turned around and had my back to you, why didn't you hit him? He had no call to hit you."

MR. MCRAE. Meaning who?

A. He said, "He had no call to hit you, you didn't do nothing wrong. I would have hit him if I had been you." And I was thinking, what's he doing? The guy gives me a cigarette going over, he doesn't hurry me because I have got a sore toe, I get to the new side and he pulls such a pretty one off, the guy does, that I don't even ask where I am going, and I get over to the new side and

he almost points where I am going, and I find I don't like going there and I turn around and I get two shots in the face. And then the guy turns around and says, well, why didn't I hit somebody else? Because I had no call to be getting the treatment that I already got. I mean, what is the guy, some kind of a loose goose? It don't make sense.

Jones said he also spoke to Thompson, who told him, " 'I could have hit you a lot worse than I did'. . . . But it was more like a humorous conversation I had with Mr. Thompson, because I knew he didn't hit me. I mean, he went through the motions but he didn't hit me."

Q. He told you he could have hit you harder if he had wanted to?

A. Yes, he said the rest of them hit me, sort of thing, so I did too.

THE COMMISSIONER. Did he actually say that, that the rest were hitting you so I did too?

A. Well, Your Honour, the impression is so strong, but I'm not a psychiatrist, as you know, but in those words, yes. . . .

Q. Well, do I understand from that that this is what you read into the conversation with Mr. Thompson rather than he saying that actually?

A. No, he did sort of say that actually – not sort of, yes, he did say that.

Q. That the other two hit you?

A. He talked about it even afterwards.

Q. Listen to me, please. Did he say that Mr. Dassy and Mr. Pano struck you, hit you?

A. Yes, he did.

I think there was some equivocation in these statements by Jones as to his conversation with Thompson, and he seemed to slide from an inference he had drawn that Thompson was referring to Dassy and Pano striking Jones to a more positive position that Thompson had actually said this. The latter, however, is not in keeping with Thompson's evidence.

Jones related an incident that occurred on an earlier occasion involving Pano, and this may have some bearing on what occurred on July 13. The implication Jones attempted to put forth was that Pano harboured a grudge against him as a result of the earlier occurrence.

He stated that he was "fooling around" with another inmate during the showing of a movie on television and that Pano was "the guard on duty". Jones continued:

A. Anyway, he says, "Jones, you come here." And I said, "Just a minute, sir." I think somebody else had my boots. They were using them for a pillow. You stick one inside the other.

Anyway, I said, "Just a minute, sir." And he said, "I want you right now." Like, I'm going to come in and get you if you don't. I remember it well because I was doing a 20-day bit and I had other charges coming up that I wanted to be on the street for. And you get good time off for 20 days.

It's kind of funny, you know. Anyway, I didn't want to lose any, and I thought he could make it rough for me, so anyway, all right, he got the point

across so I came out. And he took a swing at me. It was just like if you were getting off a stool and took a swing like that [demonstrating]. It went over my head, but the indication was strong enough, it was very, very close. And I just went down on him like that and I hit him along the forehead and I knocked him just about down.

So we went down, down to the dome.

Jones alleged that when he was interviewed by C.O. 4 Wilson in the rotunda he told Wilson that he was relating the truth when he said that he did not hit Pano. C.O. 2 Joseph Peake was also present.

A. Anyhow, Mr. Wilson asked me my story, so I said, "Mr. Wilson, I am down here to tell you the truth." I said, "Here I am standing here . . ." – at that time there was a fear about the Goon Squad sort of thing, about four or five guys, so I am sort of using that for a hunch, because I was guilty, because I hit him. But anyway, I'm down there and I am talking, as I said, "Mr. Wilson, here I am down here with my sock feet and a T-shirt on, and I am standing here telling you I never hit a guard. Now don't you think if I did, if I was guilty of hitting him, that I wouldn't be talking, I'd be using my fists at my end of it, because I'm going to get it anyway."

I remember Mr. Pano interrupted about three times while I was talking, and Mr. Wilson kept saying, "Shut up, I'll hear you later, shut up." He never said anything to me. I kept my hands in my pockets. Mr. Peake could say, "Get your hands out of your pockets" – I remember that was pretty funny, and I said, "Let's make a deal. I'll leave my hands out of my pockets if you will get Mr. Pano to shut up." Do you know what I mean?

Anyhow, it was like a contest and I won the draw. Mr. Wilson didn't want to take any good time from me, so all I had to do was, as soon as Mr. Pano went upstairs, two minutes later I was back watching the movie.

Anyway, going upstairs Mr. Pano came down to the second floor, which is right at 10, and he said, "You know you hit me." And I said, "Sure I know I hit you. Sure." "Well," he said, "I was almost able to say that too." I said something along the line, "Why couldn't you have got as lucky as me? I ducked from yours, why couldn't you have ducked from me?"

Mr. McRae read to Jones the evidence of Dassy in connection with one aspect of Dassy's allegations, and then he asked Jones:

MR. MCRAE. Did Mr. Dassy punch Mr. Pano and threaten him because Mr. Pano hit you?

A. No, he never, sir. It didn't happen that way at all.

Jones then indicated that he had been struck in rather quick succession by Pano and Dassy. "It was near the nose, because my nose was bleeding. And I think Mr. Dassy got me on the lip."

THE COMMISSIONER. Did that sort of reflect their position, that Mr. Pano was to your left and Mr. Dassy to your right?

A. That's right.

Q. And were they both facing you?

A. Yes. They were walking up the hall behind me as we started down the corridor to the segregation area.

Jones described it as "like a chain reaction", and he said that after that Thompson stepped in.

Jones also reiterated the evidence that there was no Misconduct Report in this matter, that he did not go in front of any senior officer. Mr. McRae explained that Jones was in medical segregation at the time.

J. D. McCombs, who was acting in the interest of Dassy during an absence of Mr. Salem, questioned Jones as to whether it could have been that Pano hit him twice and Dassy did not hit him at all, to which Jones replied:

A. No, it couldn't happen that way. No suggestion. No, it never happened that way. Mr. Dassy hit me and Mr. Pano hit me and Mr. Thompson went through the motions. I'm not saying that because I like Mr. Thompson either, because I'm not really in love with the guy. But there wasn't much to it. I figured he wrinkled my shirt.

I know Mr. Dassy hit me and I know he did. And there is no way in the world that he turned around and grabbed Mr. Pano and said if you hit another inmate that I bring over here to the segregated area, you're going to get an awful beating — there's just no way it happened like that. Not in the world.

In answer to questioning by Mr. Carter, Jones admitted that his conduct in the dormitory was such that there was justification for having him removed. Mr. Carter's cross-examination then continued.

MR. CARTER. When you were up to that corridor, 2 segregation, you had passed Mr. Pano who was sitting on a stool, is that right?

A. Uh-huh.

Q. And as soon as you got past him you realized that you were going into segregation?

A. Yeah.

Q. And this is when you threw your shirt down and whirled around, is that right?

A. That's right. You see —

Q. Is that what happened?

A. Yes, sir.

Q. All right so then you throw your shirt down and you turn around and Mr. Pano —

A. [Witness slaps his left fist into his right hand].

Q. Is that right?

A. Yeah.

Q. And did he turn around quickly?

A. He turned around quickly.

Q. As though you were heading back out of the segregation area?

A. That's exactly what happened, yeah.

- Q. All right and when you moved towards him quickly like that, just like you showed me now ——
- A. I threw my shirt off and my shirt never even hit the ground before I ——
- Q. Just before you were going to hit him?
- A. No, you wouldn't want to fight like the way I was.
- Q. You moved right toward him very quickly after having thrown your shirt on the floor?
- A. Yeah, yeah.
- Q. Okay, you could assume it that way. So he wouldn't know what your intentions were?
- A. No, he wouldn't.

Mr. Carter's examination seemed to indicate that Pano's defence might have been that he acted in self defence, thinking that Jones was about to strike him and leave the segregation area. However, Pano denied any striking at all. He even denied being present at the time.

EVIDENCE OF JOHN JOSEPH ZANUSSI

This inmate was 24 years of age at the time of giving evidence. He had completed Grade X and then attended a community college to up-grade his education. His record went back to September 1967.

On June 20, 1973, Zanussi was convicted of non-capital murder. He was held at the Toronto Jail, pending appeal, and at the time of giving his evidence on May 8, 1975, he had been in the Toronto Jail for 29 months, except for some 18 or 19 days when he was in St. Michael's Hospital. The average stay for an inmate at the Toronto Jail was said to be 14 or 15 days.

Zanussi stated that he had met Jones in the Toronto Jail "frequently over the past two years".

Zanussi said that, on July 13, he was in 3 dormitory, which he referred to as a medical dormitory, because he was recovering from surgery he had had at St. Michael's Hospital. He stated that the dormitory held nine or 10 inmates, and when Jones entered it was already full, so he became the extra man.

"This gave everybody a little bit of tension because nobody wanted to leave. It's pretty comfortable there. So everybody was wondering who was going to get moved out. When Mr. Jones came in he was barefooted and his feet were cut up. He was dirty and he was in need of sleep."

Zanussi could tell that Jones was in need of sleep because "he couldn't stand up very good".

MR. MCRAE. Did he look like he had been taking sedative type drugs, or

downers, as you call them?

A. Yes. . . . As I got up off my bed he asked me if he could use my bed to sleep for the afternoon, and I agreed. And he went promptly to sleep. At dinner time he woke up for his meal. . . . When he got his meal he just went directly to the table and started eating his meal with his hands. It was a pretty sloppy way to eat, I guess, but in his condition he probably couldn't do any better.

Q. Were there knives and forks provided?

A. There were spoons. But I don't think he could have manipulated it. He was extremely hungry and he just couldn't wait to use a spoon. As he was eating the food was falling out of his mouth and running down the front of his face.

Zanussi described the performance as "generally pretty disgusting", indicating that there was also gravy with the food and that the result was that it "killed everybody's appetite at the time".

A. There was an extra meal because sometimes I don't eat and I just put it on the table for whoever wants it. There was an extra meal and he ate the extra meal with the same finesse. Everything was, you know, I don't think we would have had any trouble if he hadn't asked for everybody else's ice cream. Nobody was eating anyway, but just the thought that he had just finished stuffing his face with his fingers and then asked everybody else for their ice cream. You could just feel the tension rising.

Q. Yes.

A. In my opinion it was only a matter of time before somebody was going to thump him.

As a result, Zanussi went to Dassy, who was on guard duty just outside the corridor, and asked to have Jones removed. "I just said he was in more danger in here than he would be out there. Mr. Dassy went to the phone and made a phone call and a few minutes later removed Mr. Jones."

Zanussi stated that there was another correctional officer with Dassy when Jones was removed. He did not know whom Dassy had phoned, but he did not recall a nurse coming to the dormitory. He estimated that it was about five minutes from the time he spoke to Dassy until Jones was removed.

EVIDENCE OF GEORGE PANO

Pano was a soft-spoken person when giving his evidence. He stated he was 29, that he was born in Jordan and had lived in Canada for nine years. His height was 5'10" and his weight 180 pounds. He joined the Ministry in September 1973.

As for previous employment in Canada, he stated: "I spent five years at the Montreal General Hospital, two and a half years as a nursing orderly,

and after that I completed a course in organic chemistry at Sir George Williams University and I then joined the organic chemistry department at the Montreal General Hospital in the capacity of a chemistry technician."

MR. MCRAE. And you have a degree from Sir George Williams University?

A. Yes, I do. I carry a degree and I was awarded the degree the fall of 1971, a Bachelor of Arts degree majoring in English literature and several courses related to pre-medical courses. . . .

Q. And have you taken any other university courses?

A. Yes. In 1973 in the month of June, July, I went to McMaster University and took a course in Christian Ethics to upgrade my marks so that I would be able to join the School of Medicine. However, I did score high with a B plus, but I was not able to get into medicine because the seats available there were too scanty.

To the credit of Pano he stated, "When I landed on the 6th of June 1966 in Canada, a week later I got a job in the Montreal General Hospital in the capacity of nursing orderly. I kept that job for two years. Meanwhile I was working the midnight shift, the graveyard shift from twelve midnight until eight o'clock in the morning and I worked my way up in college by going to university in the day. I finished my own schooling. It was very hard but I had to do it and that was the only way to do it."

Q. You worked at night and went to university during the day?

A. Yes, sir.

Q. And after you graduated from Sir George Williams what did you do?

A. I believe I took a respite, the duration of which I don't recall right now but after that I came to Toronto and I got a job at 999 Queen —

Q. The psychiatric hospital?

A. The psychiatric hospital and I was classified as a psychiatric aide.

Pano appeared to be a person interested in religious history and spoke Middle Eastern languages as well as very competent English. There was certainly no suggestion, from his evidence, that he was at a disadvantage in the English language and that there could have been some language misunderstanding between Jones and himself.

He stated that on the correctional correspondence course he passed "very successfully" and when he went to the school at Guelph he also passed that course "very successfully with I believe 82 per cent".

During the previous 20 months he had been working all the corridors and with senior officers he obtained his in-service training. He said that out of necessity he worked at least one or two shifts a week of overtime, but then he cut that down for personal reasons.

Pano was asked why he went into correctional work.

THE COMMISSIONER. With your academic qualifications what was it that attracted you into correctional services work?

A. I am really glad you brought this up, Your Honour. I did go to Manpower

and Immigration and I was hoping to get a job in the Immigration Department. At that time they told me that there were no vacancies available and that they would keep my file. I applied also to be an officer in the Customs and they told me that there was an opening somewhere in the Toronto Jail so I am not the type of person to live off the avails of welfare. I have never been like that. I would rather work hard and you know it's better to have half a loaf than no loaf at all, Your Honour . . .

Q. Do you feel that you can develop a career in correctional services?

A. Yes, I think I can do that, but in all fairness speaking, my heart still clings to medicine. I would like to further myself in that field if possible, but since there is no other option, I would like to get on with the Ministry of Correctional Services.

It was Pano's contention that he did not see Jones being brought into the segregation cells and did not have anything to do with putting him in the cell.

MR. MCRAE. Are you saying you didn't see Mr. Jones brought into the segregation cells? You didn't have anything to do with putting him in the cell?

A. That's correct.

When this evidence was put later to Thompson for his comments, there was the following exchange between Mr. McRae and Thompson:

Q. And you clearly disagree with Mr. Pano?

A. He was on B landing, yes he was. And he went around the back with us.

Q. And he even pushed Mr. Jones on one occasion and he insisted on physically putting Jones into the cell?

A. That's correct.

At another point Thompson was asked:

Q. Are you sure it was Mr. Pano that was there with Mr. Dassy and Jones?

A. Yes, it was Mr. Pano.

The weight of evidence certainly indicates that Pano was on duty in the segregation area when Jones was brought into the area by Dassy and Thompson. This was the evidence of Dassy, Thompson and Jones, and there was no evidence to the contrary, other than Pano's.

The July 13 attendance register indicated that Pano was on the 3:00 to 11:00 shift and assigned to Corridor 2A in the new building. It is customary, when the officer who is assigned to the segregation cells goes to lunch or dinner or takes a break, that he will hand over the keys to one of the other correctional officers on the floor.

The correctional officer assigned to 2B segregation, C.O. 2 Robert Douglass, was relieved by Pano at the time Jones was admitted. Jones was signed in in the segregation log at 6:10, and this was against Dassy's signature. The next entry in the log, at 6:20, was signed by Pano and indicated, "patrol all quiet".

It is customary to have, at the extreme left of the log book, whether it is a segregation or a corridor log, the number of inmates in the area. When Dassy signed Jones in, he indicated that, with Jones, there were now four inmates in the segregation area.

Pano's 6:20 entry also indicated four. Pano in his evidence said: "I do not really recollect very clearly whether Mr. Jones was brought into 2B when I relieved Mr. Douglass. It does not really show in the log book."

Pano went on to say that he would not admit an inmate to segregation unless a senior officer was present. Although this is the procedure that the Commission would recommend, it has not always been followed and other allegations which have been investigated have shown inmates admitted to segregation, at times, without the presence of a senior officer.

Pano said: "And this clearly denotes that I did not admit, I could not and I did not and I would not admit Mr. Jones unless or until I was told specifically by the senior officer to put him in the segregation area. This is against the rules and I would not put somebody in the segregation area unless I am told to by the senior officer. Just because an officer, an ordinary officer, brings somebody up to 2B for some unknown reason, which I do not know, and asked me to put him in the segregation area, I could not do that, sir."

MR. MCRAE. Well, without going into that aspect of it for the time being, do you recall Mr. Jones being brought into the 2B segregation area on that particular day?

A. My memory fails me very terribly. I cannot recall that at all.

One fact that Pano could not explain away was that he must have been in the segregation area at 6:20, for that was a time when Douglass was off duty. The segregation area would not have been left unattended. Dassy would not have had a key with which to admit Jones, and since Douglass was not on duty at the time I see no reason to disbelieve the evidence of Dassy and Jones and also – and maybe even more important since he had no motivation – the evidence of Thompson, namely, that Pano was in the segregation area when Jones was admitted.

With reference to the procedure of making entries in the segregation log book, the evidence obtained during the inquiry indicated two different procedures for entering the admission of an inmate into segregation. At times the entry was made by one of the escorting officers. Sometimes it was a senior officer who made the entry and at other times it was one of the other officers on escort who made the entry and indicated whether a senior officer was present. There was another procedure, sometimes used, by which the entry was made by the officer who was in charge of the segregation area.

Knowing Dassy's proclivity for being "on stage, front and centre", it is not surprising that the 6:10 entry was made by him. Having seen both Dassy and Pano, I think it would be fair to estimate that if it was a choice of who would make the entry, in 99 cases out of 100 it would be Dassy.

Mr. McRae's cross-examination continued:

Q. So you don't remember Mr. Dassy bringing Mr. Jones into segregation?

- A. No, sir, I don't recollect such an incident.
- Q. When did you first hear that an allegation was made that you had assaulted Mr. Jones? Was it last fall?
- A. It was last fall when it was published in the *Toronto Star*, I believe.
- Q. That would have been when, about October?
- A. Something like that. I don't know.
- Q. Around September 30th or early October. Wouldn't that have brought the whole incident back to your recollection? It was only a couple of months after the incident was alleged to have happened.
- A. I don't know. I just couldn't believe that such a thing could be published, which wasn't really absolutely true at all.
- Q. Can you give us any evidence, Mr. Pano, with respect to any incident involving you and Mr. Jones at any time in 2B segregation?
- A. Not at all.
- Q. Do you say such a thing didn't happen?
- A. It did not happen. I had no contact with Mr. Jones. I made my patrol and peeked through the glass door and I noted down that everybody was quiet. If I saw anything abnormal I would have brought it to the attention of the senior officer or the medical nurse.
- Q. You are saying you didn't see Mr. Jones brought into the segregation cells? You didn't have anything to do with putting him in the cell?
- A. That's correct.
- Q. You didn't have any knowledge about this incident at all?
- A. I do not recollect Mr. Jones being brought up to the corridor and I don't recollect that I personally, or Dassy, or anybody, put him in there. All I do say is I did make a patrol, I peeked in and I can't say even that Mr. Jones was there. I can't say.
- Q. You don't recollect it?
- A. I don't recollect. I don't remember if Mr. Jones was in the segregation area.
- Q. I just want to understand you clearly now. Does that mean it didn't happen or you just don't recollect it?
- A. I don't think Mr. Jones got admitted at a time when I was on 2B.
- Q. Your evidence is it didn't happen or you don't recollect? I hate to have to pin you down, but the records indicate you were there 10 minutes after he was admitted.
- A. Right.
- Q. And on your own evidence you were on duty on that floor?
- A. Right.
- Q. And we have Mr. Dassy's evidence, of course, and Mr. Jones's evidence, and perhaps other evidence, plus some documentation. Are you saying you don't remember being there or you weren't there?
- A. I don't remember being there.
- Q. Could you have been there without being able to remember?
- A. No.
- Q. No. Because this would have been brought to your attention around the 30th of September.
- A. Yes.
- Q. Surely you would have a recollection of such a thing six weeks later?

A. Obviously yes, sir.

Q. Or seven weeks later.

The 2B segregation log indicated that the last entry prior to Jones's admission was made at 5:20 p.m. At that time there were only three inmates in segregation. Therefore, on this evidence as well, Jones became the fourth inmate.

There were entries at 8:05 and 8:15, also in Pano's writing, indicating that he was in the segregation area at those times. At 8:05 Pano made a patrol and at 8:15 he was present when a nurse gave medication. At 8:45 another inmate – Laur, who is the subject of another incident set out in this report – entered the same segregation area and once again it was Dassy who made the entry in the log.

Referring to the 8:05 and 8:15 entries, Mr. McRae inquired:

Q. You don't recall even seeing Mr. Jones in 2B segregation around that time?

A. No, I don't. . . .

Q. Did you have any conversation with him that day that you can recall?

A. None at all.

Q. All right. Now more specifically, did you hit him, as he alleged you did?

A. No, I never laid a finger on him. How could I hit him? I mean, for what obvious reason would I hit a person who didn't cause me any harm at all?

Q. Well, Mr. Jones says that there was an incident involving you on a previous occasion. And I asked Mr. Jones about it, and you were here on Tuesday and probably heard it.

Mr. McRae related the incident involving the viewing of the television program in the corridor, the "fooling around", and Jones's appearance before Wilson, when Jones's statement was accepted in preference to that of Pano.

After referring to the evidence given by Jones, Mr. McRae went on:

Q. . . . I don't have to read everything he says – but he convinced Mr. Wilson he hadn't hit you. Did such an occurrence happen between you and Mr. Jones on a prior occasion to the 13th of July?

A. Mr. Jones is a calculated liar. No such thing ever took place.

Q. He never hit you on an earlier occasion?

A. Never.

Q. When you brought him down to see Mr. Wilson?

A. Never.

Q. Did you ever have occasion to call him out of a corridor?

A. Never.

Q. Did you ever have occasion to bring him down to the dome?

A. Never.

Q. You did see him in the dome on one occasion?

A. I did see him in the dome on one occasion because he was brought down from some corridor – I don't know which one – by some officer. I don't know who the officer was even. He was standing right in the middle of the dome.

Q. And you never had occasion to accuse him of assaulting you to Mr. Wilson?

A. That is not true, sir.

It is very difficult to conceive that Jones would have imagined the whole incident to the extent of the name of the moving picture that was on television, the parading before Wilson, the detail of Peake telling him to take his hands out of his pockets, and all the information about the argument in front of Wilson involving Pano – particularly since the evidence was against Jones's own interests, in that he admitted that he had completely deceived Wilson in saying that something was true that was not.

At one place in his evidence, Pano had gratuitously referred to seeing Jones on an earlier occasion "in the dome". It may well be that this was referable to the rotunda incident with Wilson. If Pano was not involved in that, what reason would he have had to remember that particular fact? The weight of evidence produced before the Commission would lead one to believe that Jones had, on a previous occasion, struck, or attempted to strike, Pano and had "gotten away with it". This may have rankled Pano.

Another possible motive for striking Jones, if Pano did so, was that, when Jones threw down his shirt and turned about, Pano may have thought that he was going to be struck by Jones, and so acted defensively. This, however, was not the evidence put forth by Pano. The decision, in this matter, would have been a more difficult one, on the question of unnecessary use of force, if there had been a claim of self defence, but, instead, Pano's evidence was a strict denial that he was present when Jones was admitted to segregation.

Pano was asked about his relationship with Dassy and he mentioned an incident in June 1974, in which Dassy apparently struck an inmate. The details appeared to be quite clear in Pano's memory. Since Dassy had, by the time Pano gave his evidence, "quit the Commission" and discharged his solicitor, he (Dassy) was unavailable for comment. Pano's allegation therefore stands unchallenged.

MR. MCRAE. How did you get along with Mr. Dassy?

A. I had one episode with Mr. Dassy. I was covering 3 and 4 corridor, I believe sometime in the month of June 1974. The day and date I can't remember thoroughly. Mr. Dassy appeared on 3 and 4 corridor during tea-break to relieve me for tea.

Fifteen minutes later I re-appeared on 3 and 4 corridor, and to my horror I see all these inmates whose ages range between 16 and 18 – couldn't be any more than 19 – in 3 corridor; to be specific, close to 3 dorm.

They were lined up against a wall, and I hear this thud, thud, going on somewhere in the closet.

I opened the closet and I see Mr. Dassy punching this inmate – I believe his name is White. I could be mistaken about the name but I could not be mistaken about the event that took place. He was thumping him, punching him out, beating him in the kidneys, and I asked him what he was doing specifically, and I told him to hand over the keys to me and not to harass any of those inmates.

He turned around and told me I was a coward and chicken-livered.

I took the inmate and put him in 3 corridor and I reassured all the inmates in 3 corridor that no harm was going to get to them, and some of them asked me, "Sir, would you be kind enough to lock us up early?" I said, "I'll do that. You fellows want to go into the cells?" Most of them raised their hand.

Went down and got the cell key and locked them up, and that was that.

Q. Did you have any words or bad feelings between you and Mr. Dassy?

A. I told Mr. Dassy, I said not to harass the inmates any more. As far as I was concerned, I said he can look after his own corridor, and I will look after mine. I never had any dealings with Mr. Dassy. He is not my type.

The evidence of Dassy with reference to the July 13 incident in the segregation area was reviewed for Pano, and then Mr. McRae inquired, "What do you say about that?" to which Pano replied, "I will sum it up very nicely. Dassy lies like a fool."

Pano indicated that it would have been of assistance had he entered in the log book the time when he took over from Mr. Douglass.

In answer to questioning by Mr. McCombs, Pano withdrew somewhat from his very definite position about not being present at 6:10 p.m.

Q. You are denying having been there at 6:10?

A. I do not remember, sir. I am not denying anything, I do not remember.

Pano had indicated that his practice was to notify the Chief's office if a correctional officer, unaccompanied by a senior officer, wanted to place someone in segregation while he was working in the segregation area.

MR. MCCOMBS. Then you are telling us that if you had been there there would have been certain steps taken which weren't taken?

A. Right. That's true. If I had been there this is exactly the sort of steps I would have taken.

Q. So then it follows that you weren't there?

THE COMMISSIONER. I don't think it is the only alternative. Another alternative would have been that Mr. Pano could have telephoned and received word that it was permissible to admit Jones to segregation; is that right?

A. That's correct, sir.

From the above it is to be noted that Pano admitted to an alternative that was mentioned to him by the Commissioner, namely that he could have telephoned to the Chief's office and received word that it was permissible to admit Jones to segregation. This admission was a retrenchment from his very definite earlier statement that he was not involved in any way.

As for Dassy having made the segregation log entry and not Pano (or whoever else was on duty at 2B at the time), Pano gave this explanation:

A. Whoever was on 2B landing at that time when Jones got admitted, it is possible that the officer in charge was in the process of locking up Mr. Jones while Dassy took the liberty to sign the book.

THE COMMISSIONER. Someone would have to let Mr. Dassy and Jones into the

segregation area?

A. That's right.

Q. Yes. And if Mr. Douglass were on duty, it would have to be Mr. Douglass?

A. Yes, sir.

Q. And if you were relieving Mr. Douglass, it would have to be yourself?

A. That's right.

Mr. Carter adduced evidence from Pano that the supper break of Douglass, the regular officer that evening on 2B, would be "about a half hour". Mr. Carter then suggested to Pano that if, as the records showed, Douglass made his patrol at 6:45, he would have left to go to supper around 6:15. This presupposes two things. One, that Douglass's meal break was only 30 minutes. The second is that Douglass immediately made a patrol upon his return. It is unfortunate that all officers do not sign out the time when leaving a corridor or segregation area, and do not sign in when entering. Had Douglass and Pano done so, there would have been no question as to who was on duty at the relevant time. It is suggested that such log entry procedure be adopted by all correctional officers. This would assist any investigation or review that might become necessary in the future.

Douglass did not sign in when he returned to 2B segregation after supper. The fact that Pano made a patrol at 6:20 and Douglass made a patrol at 6:45 would indicate that Douglass came back on duty some time between 6:20 and 6:45. If, for the sake of argument, and it is a possibility, Douglass returned to duty at 6:25, and if he took the suggested half hour for his supper break, then this would mean that he left segregation at 5:55, and if Pano took over from him, as the evidence indicated, during this supper break, then Pano would be on duty at 5:55. Although this was only supposition, it was as valid as the supposition that the changeover was at 6:15.

In answer to re-examination by Mr. McRae Pano was able to identify C.O. 1 George Thompson. Pano admitted that he was on good terms with Thompson.

EVIDENCE OF ROBERT LESLIE DOUGLASS

Douglass had been a correctional officer for 18 years. His rank was still that of C.O. 2. He was 58 years old, 5'9" in height, and weighed 170 pounds. He was born in England and served for six years in the Royal Air Force. His only training was on the job at the Toronto Jail.

On July 13, 1974, he was working the afternoon shift from 3:00 to 11:00. He took over at 2:50 with three inmates in 2B. He said he presumed that Pano was the officer on duty when Jones was brought in because "he took over from me, you see". This was when Douglass went to supper.

As for the time of going to supper, he said that it varied from 5:30 to 6:15, and supper took about 35 minutes, allowing for travelling time from the new building to the old building where he would have his supper.

He stated that he saw Jones when he came back from his supper break. The *usual* procedure for him was to check the inmates in segregation when he came back on duty after a break. This falls short of saying that he never departed from this checking procedure. There could, therefore, on this occasion, have been a time gap between his return and his patrol.

MR. MCRAE. Do you remember which cell he was in?

A. No. 1.

Q. You remember that?

A. Yes.

Q. You remember seeing him in there.

A. Yes.

Q. Then does it follow from that that he must have been put in there during your absence?

A. Correct. Yes.

Q. There is no doubt about that?

A. There is no doubt about it.

Douglass also said that he could not recall being present when Jones was put in the segregation cells and that he would remember if any violence was used on Jones, or if there was any trouble with him, and he said he would also have indicated it in the log book. He did not notice anything unusual about Jones, nor did he receive any complaints from him.

Q. You didn't notice he was under the influence of drugs. That he had any injuries or anything?

A. No.

Q. He never complained to you about ——

A. Never complained to me.

Q. About having any injuries ——

A. Quiet, you know.

He further said that there was no examination of Jones by Dr. Dickinson that night or it would have been in the log. The log indicated that Dr. Hill had come in the following day (Sunday), but Douglass had no personal recall of this. It would therefore appear that Jones was confused when he said that Dr. Dickinson visited him during the evening of the 13th.

In view of the entry made in the 3 dormitory log that Jones was removed at 6:10, it may be that the entry in the 2B log was meant to read 6:16 instead of 6:10. The last figure could be read as either a zero or a 6.

Douglass was questioned about the possibility that he could have been relieved by the correctional officer on 2C instead of by Pano.

THE COMMISSIONER. Do you know who the correctional officer was on duty in 2C at that time?

A. No, I can't recall, sir.

Q. Would you have both the correctional officers from 2A and 2C relieve you, or just one of them relieve you when you go to supper?

A. Just one of them, the one that I gave the keys to.

Q. And the fact that Mr. Pano's name is listed as patrolling at 6:20 would that indicate that he was the one that relieved you?

A. Yes.

Mr. McCombs' examination was as follows:

Q. Yes, Mr. Douglass, if you had been there when Mr. Dassy brought Mr. Jones to the corridor, would you have made some entry in the log?

A. Yes, I would, yes.

Q. So, you can say with certainty that you weren't there, and the first time you saw Mr. Jones was when you looked into No. 1 cell?

A. Yes.

Q. And at 6:10, you can say with certainty that at 6:10 you were having your lunch?

A. Yes, I must have been.

Following Douglass's evidence, Mr. McRae advised that the staff doctors' book indicated that Dr. Dickinson was on duty on July 12 and then not again until July 15. It was agreed by all counsel that it was not necessary to call Dr. Dickinson as a witness.

EVIDENCE OF GEORGE RUSSELL THOMPSON

This witness began his correctional duties at the Toronto Jail in April 1974, and at the time of giving evidence he had been employed for 13 months. He started at approximately the same time as Gary Dassy. He was working in Corridor 2 in the old jail on July 13, 1974. He was on the 3:00 to 11:00 shift and came on duty at 2:14.

With reference to the Jones incident, he said: "I remember going over, accompanying Mr. Dassy. I was working 2 corridor and Mr. Dassy came down the stairs with inmate Jones and said he was heading toward the segregation area. So I accompanied him over."

MR. MCRAE. Did he [Dassy] ask you to accompany him? Or how did you happen to go?

A. I don't recall whether he asked me or whether he was just alone. I mean, you never go alone.

Q. To segregation?

A. No.

Q. Is that a regulation or is that just a practical rule?

A. It's just a practical rule.

Q. Did you notice anything unusual about Mr. Jones at that time?

A. Well, I had just seen Mr. Jones prior to this in the corridor or in the admitting area or 7 and 8 corridor, and I didn't notice really how he acted or responded to anything. So at that moment I would not have known there was anything wrong with him. . . .

Q. Could you see he was under the influence of drugs? That's what I am asking.

A. Once we got going, yes. Once we were on our way over, once we got up there, he wasn't himself at all.

Q. What was he doing?

A. Just his reflexes and his speech. Everything was just a lull, you might say. He just wasn't proper. He wouldn't talk to you right.

Q. Somewhat incoherent?

A. Yes. . . .

Q. And Mr. Dassy accompanied him. Was there any problem going over?

A. No.

Q. Except for the fact that he was obviously not normal?

A. That is right.

Q. I understand Mr. Dassy gave him a cigarette. Do you recall that?

A. I don't recall that.

Q. All right. Can you describe what happened when you got to the segregation area?

A. There was an officer on the landing by the name of Mr. Pano in charge of the landing.

Q. You know officer Pano?

A. Yes.

As to the exact position of Pano when they came over, Thompson was not able to say. "I don't recall exactly where he was, but when bringing an inmate over we had to use the stairs and the stair door was locked. He had the key. He had to come over and let us out."

Q. You say you assumed it was Mr. Pano who opened the door for you?

A. Yes.

Q. Do you recall?

A. Yes.

Thompson said that they went through the sallyport and down the corridor of the segregation area and he remained at the door to the day room of the segregation area while Pano, Dassy, and Jones went over to the shelves where the baby dolls were kept and where the inmates removed their clothing.

Thompson then described the incident.

A. Mr. Pano left . . . to open a segregation cell. He checked the cell out and came back to where Mr. Dassy and Jones were standing in the corner. Mr. Jones was told to undress, put everything on the shelf, and I don't recall whether he was doing it or arguing or what the story was, but there was a baby doll thrown in his face.

Q. Someone threw the baby dolls at Mr. Jones?

A. Yes.

Q. Who did that?

A. Mr. Dassy.

Q. All right.

A. From there he was, a bit of arguing, but he did get dressed and he was put into the segregation cell.

Q. Wasn't there a little more than arguing now?

A. Well —

Q. We want the whole story exactly as you saw it. You are under oath. Mr. Jones started to take his clothes off and what happened?

A. There was a couple of blows made.

Q. Would you describe it as you recall?

A. There was one to the stomach and I don't know, at least one to the face.

Q. You are saying that Jones was hit?

A. Yes, he was.

Q. By who?

A. Mr. Dassy and Mr. Pano were the only two there. . . .

Q. Would you describe it exactly as you saw it?

A. Well, I mean it is a long time back. I can't recall exactly the motions or whatever were made. I can remember blows were made.

Q. You remember Jones getting the blows, receiving them?

A. Yes.

Q. He didn't hit anybody?

A. Not that I seen; no.

Q. Do you remember him getting hit in the stomach and do you remember him getting hit in the face?

A. Yes.

Q. Who threw those blows?

A. Mr. Dassy. Mr. Pano — they were standing at — I don't know, you might say a three-quarter, three-corner position. . . .

Q. You saw Mr. Dassy strike Jones?

A. Yes.

Q. Is that the blow that landed in his face or the one that landed in his stomach or both?

A. I seen the one in his stomach.

Q. From Mr. Dassy?

A. From Mr. Dassy, yes. The one in the face — Jones was facing Dassy, so it couldn't have come from behind.

Q. So who hit him in the face?

A. It must have been Dassy who hit him.

Q. One of these blows knocked Jones into Mr. Pano?

A. Yes.

Q. Mr. Pano punched Jones away?

A. Shoved him back or Jones was between myself and Mr. Pano. I don't really know how it happened, but Jones come back off him again.

Thompson was asked if Pano punched Jones, to which he replied, "Not that I seen; no sir." Thompson denied any involvement with reference to

the above, which leaves his evidence as follows:

- (1) Dassy definitely struck Jones.
- (2) Pano pushed Jones, but Thompson didn't see him punch Jones.
- (3) Thompson himself was not involved in the punching incident.

From the positions mentioned by Thompson, it could well be that his view was blocked. Pano may have struck Jones without Thompson being able to observe it. At the beginning of his evidence, it appeared that Thompson was about to indicate that Pano also struck Jones. If this was his intention, his later answers did not carry through on this intent and, instead, reduced Pano's actions to that of pushing Jones. It did however conclusively indicate that Pano was at the scene. Thompson's evidence as to his own non-involvement was at variance with the evidence of Dassy and Jones.

As to what triggered the incident, Thompson indicated that Jones was always using foul language and did so on this occasion as well.

Thompson said that he assisted in putting Jones into the segregation cell.

Q. You used force to put him in the cell?

A. We grabbed one on each arm.

Q. Who was that?

A. I think it was Mr. Pano.

Q. What cell did he go into? Can you tell us?

A. I can't tell you that.

Q. Did anything further happen then?

A. I don't know.

Q. Was he kicked at all?

A. No he wasn't, not that I had seen at all.

Q. Did Mr. Dassy ever have his foot on Jones's chest?

A. No.

Thompson was also of the opinion that Jones did not go down to the floor at all. He said he did not know why there was no senior officer present, and he had never taken an inmate to segregation on any other occasion without there being a senior officer, which was the normal practice. Thompson was asked whether Jones was struggling when he was put into the segregation cell and his answer was, "Arguing and use of foul language."

Thompson did not recall the incident occurring in the manner that Dassy had related. Dassy's evidence was read to him, in part. He said, however, that Pano would definitely ask why Jones was being brought into segregation. "Being in charge of the area, he would have to, like he had to straighten up his log."

Q. But you don't recall him asking it?

A. I don't recall.

Q. He probably did but you don't remember?

A. He would have to but I don't recall him doing so.

Thompson also stated that Dassy did not strike Pano as Dassy said he had, in protection of Jones. At a later point, he denied Dassy's allegation that Pano struck Jones three times, and he stated that he was watching all the time.

Again, Thompson denied that he struck Jones as alleged by Jones, and as he continued giving evidence he seemed to be stronger in his evidence in support of Pano's denial of striking Jones.

Q. He [Jones] describes both Mr. Dassy and Mr. Pano as punching him in the face and in the stomach.

A. What I seen, Mr. Pano did not make any punch.

Thompson denied Jones's evidence about them speaking to each other after the incident.

On the matter of having told Jones that it was only a token punch that he had given him, Thompson said that there was never any conversation about that at any time.

Thompson was quite definite that Pano was there with Dassy and Jones. Pano's evidence was read back to him, in part.

Q. And you clearly disagree with Mr. Pano?

A. He was on B landing, yes, he was. And he went around the back with us.

Q. And he even pushed Mr. Jones on one occasion and he insisted on physically putting Jones into the cell?

A. That's correct.

Thompson was questioned further as to the push that he said Pano gave to Jones.

THE COMMISSIONER. With reference to this push by Mr. Pano, was that between the first and second blows of Mr. Dassy, or was it before the blows or was it after the blows?

A. It was between the blows, sir.

Q. Yes. Is that what precipitated the second blow, Mr. Pano pushing Mr. Jones into Mr. Dassy?

A. I couldn't say for sure, sir.

Q. Why did Mr. Pano push Jones?

A. Well, Jones was coming toward him at the time. Like when Mr. Dassy made the blow, of course he took a few steps back and Mr. Pano was right there.

Q. Yes. Was it that Jones took the steps backwards to avoid another blow, or was it the result of the blow that pushed him backwards? Do you know?

A. I couldn't say that either, sir.

Q. At the time that Pano pushed Jones, how far would the two of them be from Mr. Dassy?

A. Three feet.

Q. Yes. And was the push a strong enough push to propel Jones back toward Mr. Dassy?

A. I would say so, yes.

Q. Yes. Do you know if he struck Dassy before Dassy started his second blow?

A. I didn't see him strike him, no.

Q. So although he was pushed forward he didn't come in contact with Mr. Dassy before Mr. Dassy struck him the second time?

A. No, sir.

Q. That's correct?

A. That's correct.

Thompson said he had no trouble with Jones on the way over to the segregation area.

MR. BRYANT. So given what you saw, did there appear to be any reason why Dassy would strike Jones, as you have told us he did?

A. Dassy didn't need much more of a reason. He was that type of fellow, just as soon as nail you as look at you.

Q. What you are saying is, one moment he would offer you a cigarette and the next moment he would haul off and clout somebody. Is that right? . . .

A. He was a bit that way, do anything to throw you off guard. . . . He was like that all the time. He was the type that you didn't want to turn your back on.

Thompson said that he had never seen Dassy strike another correctional officer. Thompson also said of Dassy, "If there is any trouble anywhere the first guy banging on the door was Dassy, but as far as an exact incident I could not tell you."

Thompson said there was nothing that warranted what Dassy did, and he should have spoken to somebody about Dassy striking Jones, but when "you start questioning your fellow officers on occasion, then you might as well pack in the whole works".

Thompson stated that he had never seen, on any other occasion, an inmate struck for "no reason whatsoever".

He was asked whether when Jones went back, and before Pano pushed him, Jones had come into physical contact with Pano.

A. He backed right into him, yes, sir.

Q. He had backed right into him, touching him?

A. Yes.

JONES SUMMARY

The Jones incident was not so pressing that Dassy could not have reported it to a senior officer, who could then have attended at the corridor to make his own assessment. No doubt, under the circumstances as related here, he would have agreed that Jones should be taken into segregation. Jones would

then have been escorted to segregation and placed in a cell under the supervision and control of a senior officer. Had that been done, I am of the opinion that the incident would not have occurred.

Therefore, the underlying cause, aside from the unpredictability of Dassy's behaviour, was the fact that the escorting to segregation was not supervised by a senior officer. Segregation is a severe punishment and it is a type of punishment that might well be resented by an inmate. An inmate might accept this punishment from a senior officer, whereas he would not accept it from a line officer, particularly a line officer who conducted himself, according to the weight of the evidence, as Dassy did; that is, be very friendly and lead the inmate to believe that he was being taken to an area of the jail, other than segregation, even to the extent of offering him a cigarette, and then for the inmate to find out suddenly that he was being placed in segregation. The shock of the discovery might well cause an inmate to react in the way Jones was said to have reacted, namely, swearing and cursing, and Jones may well have thrown his shirt in anger and frustration.

On the matter of the use of unnecessary force, I find that Dassy struck Jones unjustifiably. The evidence against Pano is less strong and consists of the allegations made by Dassy and Jones. Between Pano and Jones there was definite hostility which could account either for Pano wishing to even an old score or for Jones making a false claim. The matter is further complicated by Pano's denial of being present when Jones was brought into segregation. This denial is against the weight of overwhelming evidence, both oral and documentary. I can come to no other conclusion than that Pano purposely misled the Commission in this regard. I am satisfied that he knew Jones. I do not believe that he forgot about the incident. It would therefore be very easy to arrive at a conclusion that he wished to hide the fact that he had punched or kicked Jones as alleged. Such finding would be in accord with the evidence of Dassy and Jones. It would, however, run contrary to the evidence of Thompson, at least to the latter and more explicit part of Thompson's evidence. Therein lies the dilemma, and I propose to give Pano the benefit of my doubts. I do think he pushed Jones, and not too gently. But this was after Jones had been struck by Dassy and propelled into him. Such pushing may therefore have been a "pushing away".

As for Thompson, it was only Dassy who made any serious allegation. Jones described any participation by Thompson as being a "show" sort of thing and no more than token. He "went through the motions . . . wrinkled my shirt". If Thompson did participate (which he denies) it was not with the use of any force.

During the hearing of the Jones allegation, evidence was given by Pano, Jones, and a friend of Jones, one James Bell, about threats and counter threats that passed between Jones and Pano during a lunch break and at another recess on the day they both appeared before the Commission. Since these were not directly referable to the July 1974 allegation, no useful purpose would be served by reviewing them.

There was another item that was mentioned by Jones. It involved an allegation of force by another correctional officer on a separate occasion. In view of answers given to Mr. Carter on cross-examination, Commission

counsel did not consider it necessary to pursue the matter further by way of investigating and calling witnesses and making it the subject matter of an allegation.

On the subject of the effectiveness of this Commission, Jones did not share inmate Somerton's scepticism, stating instead that matters at the Toronto Jail "sure" had improved. It is hoped that this was in part due to some ongoing recommendations that were made as well as some self-initiated changes by the Toronto Jail staff when certain matters came to light during our hearings. It was considered better to make ongoing recommendations when warranted rather than to withhold them for this report.

Inmate "X" Allegation

EVIDENCE OF GARY DASSY

Dassy referred to an incident that occurred during an afternoon shift, and he thought it was "around" August 1, 1974, but said it could have been later. The incident involved a finger injury to C.O. 2 Joseph Peake. Dassy said he was not involved personally and the incident was related to him by three correctional officers – Peake, C.O. 1 George Thompson, and C.O. 5 Stanley Johnson.

He stated that the three had related the incident to him independently.

MR. BYNOE. All right now, would you advise the Commission of the matters concerning the injury?

A. Well, Mr. Peake broke his finger, sir, on an inmate.

Q. Could you tell us what you were told with respect to how that occurred?

A. An inmate was brought in, or a prisoner was brought in, I believe for tickets or warrants, sir, into the search area of the jail.

Q. What do you mean by "tickets or warrants"?

A. Traffic tickets, sir, outstanding traffic warrants that he had not paid.

Q. So he hadn't paid, and I gather at some time he was arrested and brought to the jail?

A. Yes, sir. . . . Mr. Peake, Mr. Thompson, and Lieutenant Johnson were in the search area with this man.

Q. That would be the search area of the old building?

A. Yes, sir. . . . The fellow was admitted, he was then taken into the search

area and told to strip. He didn't want to strip and he wouldn't strip unless he had a doctor there.

Dassy was unable to identify the inmate either by name or from a photograph but his description was as follows: "I believe he would be about 6'3", skinny, blond short hair and fairly old. When I say fairly old I believe he would be in his early forties, sir."

THE COMMISSIONER. You say the way he was described to you. Did you see him?

A. I never seen him, sir. I could possibly have run across him later in the jail and never associated who they were talking about.

Q. He was never pointed out to you?

A. Not to my knowledge, sir, no. . . .

MR. BYNOE. Would you then continue to describe what you were advised occurred?

A. Well, one of them – I'm not sure which it was – I think it was after the fellow wouldn't strip until he seen a doctor, George Thompson put on a doctor's coat and said he was a doctor, so the fellow stripped and took a shower and then a fight broke out in the search area.

Q. Do you know what happened that caused the fight?

A. No I don't, sir.

Q. Do you know who was involved in the fight?

A. From what I was told, all three that I previously mentioned, sir, or two, and Stan Johnson stood back.

Q. All right. So I gather that Joseph Peake and George Thompson were the correctional officers involved in the fight?

A. Yes, sir.

Q. As well as the unknown inmate?

A. Yes, sir.

Q. What happened then?

A. They took him over to B landing, sir, I don't know which one. I think it probably would be 3B. . . . And then they started again with the inmate. I don't know who started it, or if the guard started it. Finally they couldn't handle him and Lieutenant Johnson had to step in and finish the inmate off.

Quote Stan Johnson. [Dassy indicated that the last nine words had been spoken by Johnson.]

Q. Quote Stan Johnson – how did he finish him off?

A. With blows to the stomach, sir.

Q. With what?

A. With his fists, sir.

Q. Is there anything else you can tell us about that incident?

A. Peake ended up going to the hospital that night, sir, with a suspected broken finger or hand. He came back with the finger anyway, sir, and the next day George Thompson ended up ———

Q. You say he came back with the finger ———

A. Well he came back to work that night, sir, with a cast on it. . . . The next day George Thompson – both his wrists were bandaged with tensor bandages.

and Stan Johnson wanted to know where I was hiding.

Q. Where you were hiding?

A. Yes, sir.

Q. Were you on duty at that time?

A. Yes, sir.

Q. And was there any suggestion that you had been called and failed to respond?

A. I think it was more or less a joke, sir.

Q. A joke?

A. I took it as one. . . . I don't know whether he was serious or not.

Q. Is there anything else you can tell us about that matter?

A. No, sir.

If Dassy's evidence is correct and an inmate did come in after being picked up on traffic tickets, and if the inmate did ask for a doctor to be present, then this request was a reasonable one under the circumstances. There is no suggestion that this man had any criminal record. He may have felt a bit concerned about stripping in the absence of a doctor and a doctor should have been called to the area. It is not a request that is frequently made and when it is made I see no objection to it being complied with. This is another reason why there should be a doctor in the Toronto Jail at all times.

In reviewing the Caccia allegation, which is one of the "write-ins" reported elsewhere, the possibility of Dassy having confused the Inmate "X" allegation with what is alleged to have occurred to Caccia came to mind. The appearance of Caccia and the description of Inmate "X" were at variance, but Dassy did not see Inmate "X" and may have guessed at a description rather than admitting that he did not know the answer. Both events were alleged to have taken place early in August 1974. "Lab" coats were said to have been worn each time, and the offence for which the inmate was arrested arose out of parking ticket warrants. The officers named were different, but in the Caccia matter reference is made to the doubt as to the identification of C.O. 2 John Ferguson. In the Inmate "X" episode, the officers named by Dassy – Johnson, Peake, and Thompson – all denied involvement.

In subsequent filed statements, Johnson said:

I can honestly say that an incident that Mr. Dassy has described has not occurred while I have been on duty at the jail. I have never been a witness to an incident where a guard puts on a "doctor's coat" to speak with an inmate. I have accompanied doctors around the jail and they wear a "white smock" that doctors normally wear. As a matter of fact the guards would not have access to the doctors' coats.

Some years ago, guards in the shower area were issued with coats that they wore over their uniforms but they were an off white or beige colour; they were issued for sanitary reasons but this practice stopped many years ago.

Over the years, several incidents have happened in the shower or admitting area, particularly inmates returning from court that have just been sentenced.

Prisoners are also being brought into the jail on warrants of committal or unpaid fines. They are accepted up to 8:00 p.m. every day. We have very few problems with this type of inmate.

Peake stated, in part, as follows:

I have heard the allegation of Gary Dassy and first of all I have not had a broken finger or a cast on my hand and I have never been involved in an incident where another guard has impersonated a doctor.

On August 26, 1974, at approximately 12:00 noon, I bruised and sprained my right thumb while assisting two officers in the photo area with a violent inmate. I didn't require any hospital treatment for this. I just had the jail nurse look at it. I submitted a compensation report for this incident.

On June 29, 1974, at 10:15 p.m., I slipped on the wet stairs while coming down the stairs from 7 and 8 corridor, I twisted my left thumb, right wrist, and the side of my hand was bruised. I was treated for this at the East General Hospital. I was off work one day for this injury. . . .

The August 26, 1974, incident, I cannot recall the inmate's name, but the injury was not serious. I continued on with my regular duties. The June 29, 1974, incident I cannot recall the inmate's name, he had nothing to do with my falling but I was treated at the hospital. I might also mention that if I am treated for an injury that I received while working, my employer requires me to submit a compensation report. . . .

I have not been involved in any incident as Dassy has described.

Thompson reported as follows: "I have never worn a white coat, never injured both my wrists at the same time. I injured my hand once when I slipped on the wet floor."

A compensation claim was filed for Thompson's injury and it was referable to a July 19, 1974, date.

INMATE "X" SUMMARY

It would appear that Dassy's recounting of Inmate "X" 's assault was a mixture containing a pinch of fact to which was added a sizeable measure of fiction, and the whole was liberally sprinkled with fantasy. It may well be that Dassy had heard something about the Caccia incident and that there was some confusion of the two. At any rate, they are separately reported. Without any further evidence in support of Dassy's allegation, his claim of assault to Inmate "X" must remain unproven.

The Laur Allegation

Q. What was the incident? — A. He threw a bucket of water at me too, sir. — Q. All right. Did any of it go on you? — A. A fair bit of it, sir. — Q. What effect if anything did it have upon you? — A. I laughed, sir. — Q. You laughed? — A. Yes, sir. (Gary Dassy on actions of Illo Laur)

EVIDENCE OF GARY DASSY

When giving evidence with reference to the Donald Jones incident, Dassy came across the name of Illo Laur in the log book for 2B segregation. At 8:45 a.m. on July 13, 1974 there was an entry by Dassy: "Illo Laur admitted from 1A to 2B landing 5 cell. Own request I/c Chief Office. *Watch this man. G. Dassy.*"

MR. BYNOE. Now you have indicated just a moment or two ago by looking at [this exhibit] and the notation after 8:45 and the name Illo Laur that you have some evidence that you can give with respect to that gentleman? Now is that correct?

A. Well —

Q. Now is that correct?

A. He was never —

Q. No. Is there some evidence you can give with respect to —

A. It just brings back that I had a busy day that day.

Q. Is that all?

A. And the fact that I had to take him out of 1A hospital because he had thrown a bucket of water on one of the guards and the guard wasn't too pleased at him. I got a phone call from the old building from the Chief to get over there and calm the guard down and get this whatever his name is out.

Q. Did you do so?

A. Yes, sir.

Q. Without incident?

A. No, sir.

Q. What was the incident?

A. He threw a bucket of water at me too, sir.

Q. All right. Did any of it go on you?

A. A fair bit of it, sir.

Q. What effect if anything did it have upon you?

A. I laughed, sir.

Q. You laughed?

A. Yes, sir .

The fact that Dassy shrugged off this matter, according to his own evidence, and laughed, indicates the unpredictability of his reactions. There were sometimes stronger reactions from him for much less cause.

MR. BYNOE. Now, while you were laughing did you do anything about it?

A. It was just so funny looking at the other guard, sir – and if he could have got his hands on this guy he was going to kill him.

Q. All right. Now what about you?

A. I had to laugh.

Q. All right, so you laughed and what else did you do?

A. Finally I got him out, sir, and I believe I put him in 1A.

Q. You say finally. Did you have any difficulty getting him out?

A. Yes, sir. He didn't want me to come into the cell.

Q. All right. Then what happened with respect to that inmate?

A. I finally gave him a cigarette to get him out, sir. . . .

Q. And did you have a cover at the door?

A. No, sir.

Q. No cover?

A. No, sir.

Q. Doesn't that seem to be contrary to the procedures that have been followed with respect to other incidents?

A. Sure, I believe you have seen the rules and regulations and if they were followed there would be three or four hundred guards in the Toronto Jail.

Q. Now apart from that I understood that on other occasions when guards were going into the corridors that they would not go in without a cover nor would they go in with a key; is that right?

A. That's right, sir.

Q. Now on this occasion this didn't seem to have been followed? Is that right?

A. Yes, sir.

Dassy then explained that C.O. 2 Edward Dowhey had the keys to the main door of 1A hospital wing. This, at the time, was used as a psychiatric facility and it had individual cells. Dassy went on to explain that, at that time of night, "all of the inmates would be . . . locked in their cells".

Dassy stated that the outside door to the corridor was unlocked and he and Dowhey were in the corridor. The inmate, Laur, was still in his cell.

Dassy did not know how Laur got the pail. He thought perhaps Dowhey had given it to him.

MR. BYNOE. Dowhey was outside the cell and he was wet?

A. Yes, sir. He was standing in about an inch or two inches of water.

The cell was flooded. . . .

Q. Now then, as you walked up, I gather you got a bucket of water?

A. Yes, sir.

Q. All right. Then what did you do and what did Dowhey do?

A. Well, Dowhey was screaming, "I'm going to kill the poor guy," and I was just, you know, laughing, sir.

Q. Yes.

A. So I finally looked in and there was this fellow sitting on his mattress.

Q. Where was the mattress?

A. In the water, sir.

Q. Where was the water?

A. On the floor, sir.

Q. On the floor? All right. Could you see where the water was coming from that was on the floor?

A. I believe he broke his toilet, too, but I am not sure of that.

Q. Now then what did you do?

A. Well, I coaxed him out with a cigarette. Dowhey had now calmed down. The guy was out of the picture.

Q. What do you mean by that?

A. Well, he was mental, sir.

Q. That is the psychiatric wing, is that right?

A. Yes, sir.

Q. So you gave him a cigarette?

A. Yes, sir.

Q. And what happened then?

A. He said he wanted to be by himself.

Q. Yes.

A. I said, well, I'll put you in one of the cells that you can be by yourself if you behave yourself.

Q. Well, was he with anyone in that cell?

A. No, sir, but he wanted to be away . . . the other inmates were upsetting him too, from what I gather. They were egging him on, doing what he did to Dowhey. . . . So I moved him I believe to 2B landing. . . . I believe I phoned the Chief and said it would be better off putting the guy in a segregation cell away from the other inmates and he agreed with me, sir.

Q. So that you had permission from whoever was in the Chief's office?

A. Yes, sir.

Q. Just as a matter of procedure since this was the medical wing, did you not require permission from the doctor in charge of the wing or any of the medical staff to do that?

A. No, sir, because the doctor – they would put him in the segregation themselves, sir. There would be no need to get hold of them unless the person was dying.

As a matter of procedure, if someone is taken out of a hospital wing or a psychiatric wing then it should be with the permission of a doctor and it would be advisable to have this in writing. If a doctor were on duty at all times in the Toronto Jail there would be no problem in this regard. If perchance a doctor was not on duty, then the authorization of a nurse should be necessary.

THE COMMISSIONER. Was there any action on the part of any guard against Laur?

A. Not to my knowledge, sir. Somebody might have with the water episode he was doing.

Q. Yes, but none that you know of?

A. None that I know of, no, sir.

Dowhey gave evidence from time to time, but it was not necessary to question him about this matter. No allegation had been made by Dassy or Laur or anyone else that Dowhey in any way used force on Laur. Laur could not be located for interview by the Commission investigators.

LAUR SUMMARY

The Laur incident has been reviewed not because of any use of force but rather because it was raised during the hearings by Dassy, and evidence was heard from him on the matter. It depicts one of the problems correctional staff may encounter, and for which they should be trained. It also shows a different reaction by Dassy to that of using force, to which he at times confessed.

The Swift (et al.) Allegation

"It had to be a Sunday, sir, because that's the only time they get hard-boiled eggs in the jail . . . just after breakfast started, hard-boiled eggs started coming through the grilles. . . . It's hard to say if they were aimed at anyone in particular, sir. They just came out through the grille section . . . with a fair amount of force." (Gary Dassy)

"I believe, on that same day too, there was a bit of a fire, if I am not mistaken, in one of the cells. . . . So it was a pretty bad day . . . they were just more or less acting up but I guess we had about the last straw." (Gary Dassy)

"We asked him, you know, who threw the eggs. He wouldn't, you know, wouldn't answer, so we open-handed him, sir." (Gary Dassy)

EVIDENCE OF GARY DASSY

Dassy described an incident which he said occurred on a Sunday between April 10 and April 20, 1974. That would have made it April 14; however, it was established later that the incident occurred on April 21.

MR. BYNOE. Now then what happened and where did this occur?

A. It had to be a Sunday, sir, because that's the only time they get

hard-boiled eggs in the jail.

Q. Yes.

A. It was 3 and 4 corridor. . . . I had been advised by [C.O. 2 Alex] Sandy Davidson, a guard who usually works the T.A.P. [Temporary Absence Programme] dorm and kitchen dorm, that if I had any trouble with the kids send them down to him. He knew what to do with them.

Dassy said that Davidson had advised him about this one morning before they went on shift. Dassy said that Davidson had worked at the Toronto Jail for some time and that he (Dassy) was relatively new.

Q. And he advised you that if you had any trouble with the kids? . . .

A. To take them down to Garrett's Hotel as they were called then, sir.

Q. Where is Garrett's Hotel?

A. In the old section of the jail, sir.

Q. What floor?

A. Basement.

These were the old segregation cells and they were rarely used at the time, except for storage. Garrett was a Toronto Jail correctional officer.

Dassy related that "just after breakfast started, hard-boiled eggs started coming through the grilles" where he was stationed. He said, "It's hard to say if they were aimed at anyone in particular, sir. They just came out through the grille section . . . with a fair amount of force."

Dassy said that he was not struck by any eggs. "I didn't know who did it or who was throwing the eggs. I believe there were 18 inmates in there." The average age of the inmates was 16-18.

Dassy continued, "I believe, on that same day too, there was a bit of a fire, if I am not mistaken, in one of the cells. . . . So it was a pretty bad day . . . they were just more or less acting up but I guess we had about the last straw. . . . We ran out of, you know, answers as to what we could do with them, so I remembered what Sandy Davidson said, so I phoned him up, and I had asked which inmate had done it, you know, and nobody wanted to own up to it."

Q. How did you go about that?

A. I think I had them line up, sir, with another guard.

Q. So you went in the corridor?

A. Yes, sir.

Q. And what did you do at that time?

A. I can't remember exactly what I did, sir, but words to the effect like who threw the eggs.

Q. All right. Did anybody admit it?

A. No, sir.

Q. What happened then?

A. I remembered Davidson's words, to phone him, so I phoned him and told him what happened, and he said well, he said, bring one down one at a time into the old segregation cells and I will meet you there.

Q. This is Garrett's Hotel area?

A. Yes, sir. . . .

Q. Did you know which inmate to start with?

A. Well there were 18, sir, so I started with the first man. . . .

Q. So you just picked the closest one to you, I gather?

A. Yes, sir.

Q. And what happened then?

A. I took him downstairs and Sandy Davidson was waiting for me. We asked him, you know, who threw the eggs. He wouldn't, you know, wouldn't answer, so we open-handed him, sir.

Q. All right. You say we open-handed him?

A. Yes, sir.

Q. What does that mean?

A. Well, myself and Sandy Davidson hit him with our open hands, sir.

Q. Where?

A. In the face area, sir.

Q. Do you know who struck the first blow?

A. No sir, I don't.

Q. Did the inmate do anything towards you or towards Mr. Davidson before he was struck?

A. No, sir.

Q. Did he say anything objectionable to you?

A. No, sir.

Q. The only provocation was that he refused to tell who had thrown the eggs?

A. Yes, sir.

Q. Did you ask him if he knew who had thrown the eggs?

A. Yes, sir.

Q. What did he reply?

A. "I don't know who threw the eggs."

Q. Did you have . . . any reason to believe that he in fact did know?

A. Yes, sir.

Q. What information or basis did you have?

A. Just the attitude of them in the corridor there. They were not going to tell on another inmate.

Q. Did it ever occur to you that that inmate in fact didn't know?

A. No, sir. I am pretty sure all 18 knew who threw the eggs.

Q. Do you know who struck the inmate first, you or Mr. Davidson?

A. No, I don't, sir.

With reference to the blows struck by Davidson and himself, Dassy said that "fairly great force" was used but that it did not have any effect on the inmate.

When Dassy returned to Corridor 3, he said, C.O. 2 David Cockburn was there, and he undertook to take the next inmate down to Davidson. According to Dassy, Cockburn was not on duty on that corridor at the time. Dassy said he did not know whether Cockburn had been sent there.

A. There are phones, sir, and Sandy Davidson could have phoned him and

said for him to join him with the other inmate.

Q. Did you hear Mr. Davidson phone?

A. No, sir. I wouldn't have heard that.

Q. Were you told that Mr. Davidson had phoned?

A. No, sir. I am just surmising that, because he was there and he said he would take the next fellow down.

Dassy said that two of the inmates involved were Michael Swift and Leonard Wilson, and that it was one or the other of these who was taken down by Cockburn. This information was furnished by Dassy on December 9, 1974, when he was giving evidence. Prior to that he had been unable to recall any names. It was established later that Wilson was not in the jail at the time. Dassy said that when Cockburn brought the inmate back, the inmate was crying.

Dassy said that no charges were laid as a result of this incident. In all, he claimed that three inmates were taken from the corridor and returned – the first one by Dassy and the next two by Cockburn. Dassy was unable to recall anything about the third inmate upon his return.

EVIDENCE OF DAVID WEBSTER COCKBURN

When Cockburn was questioned on March 13, 1975, it was indicated that the incident occurred on Sunday, April 21, 1974, and not on April 14 as Dassy had said. I find the correct date to have been April 21.

The evidence of Dassy was reviewed in part for Cockburn, and he was asked if he knew the area referred to by Dassy as Garrett's Hotel, to which he replied in the affirmative. Counsel reviewed Dassy's account of what happened after he brought the first inmate back to Corridor 3:

MR. BYNOE. Mr. Dassy says that you, David Cockburn, were there and that you, Mr. Cockburn, told him that you would take the next inmate down to Davidson and you were not on duty at that station at the time.

Mr. Dassy surmised that Mr. Davidson had phoned you or got in communication with you somehow and told you to bring the next inmate down to him.

He says that you, Mr. Cockburn, took another inmate and he believes it was an inmate by the name of Leonard Wilson, down to see Mr. Davidson and that you went out of their sight and when you came back with that inmate a little later that inmate was crying . . .

In summary that seems to be the evidence with respect to the allegation that you took two inmates down to the vicinity of Garrett's Hotel and that the inference is that Mr. Dassy and yourself, or Mr. Dassy aided by you, struck

the inmates.

The attendance record for Sunday April 21, indicated that Davidson signed in at 6:10 a.m., Dassy at 6:25, and Cockburn at 8:30. The Corridor 4 log showed that Cockburn was on duty there for at least some of the time. Corridors 3 and 4 are companion corridors.

From a perusal of the log books it appeared that most of the entries for both corridors during the 7:00 to 3:00 shift were made by Dassy, but there were also some entries by Cockburn.

Cockburn was asked about Dassy's allegation that he was involved.

Q. Did you, on any Sunday, take an inmate down to the vicinity of Garrett's Hotel?

A. Not that I recall, sir.

Q. Did you at any time take an inmate down to see Mr. Davidson where the inmate had his face slapped?

A. No.

Q. Did you at any time see Mr. Dassy take an inmate down to that area?

A. Not that I recall, sir.

Q. Did you at any time be a party to any such conduct as alleged by Mr. Dassy? By that, I mean taking young inmates to some area of the jail where they were either threatened or assaulted to give information?

A. No, sir.

The above indicated that Cockburn was definite in some of his answers and less definite in others. It was disturbing that, on the question of whether he had taken an inmate down to the vicinity of "Garrett's Hotel", he stated that he could not recall. Did this mean that at some time he might have taken inmates to that area? In any event, he denied that any assault took place and since Dassy did not personally witness any assault and only inferred it from the crying of an inmate and the fact that a previous inmate had been struck by Davidson and himself, the evidence fell short of a definitive finding of assault on the part of Cockburn. The inmate, if he was taken down to the area mentioned, could have been frightened and not touched at all.

Cockburn was questioned further on the allegation.

THE COMMISSIONER. Mr. Cockburn, Mr. Dassy's evidence was rather definite on this matter, and, as I understand you, you say that you don't recall the incident. Might Mr. Dassy's memory be better on this than yours?

A. That's a good question, sir.

Q. What is your answer to the good question?

A. I don't really know, sir.

Q. You see, what I want to find out – where there is a conflict between two witnesses, and to be fair to you, I want to know whether you are saying that it never happened or that you don't recall whether it happened or not. And then I have to consider that as against what Mr. Dassy has to say.

A. I don't recall this particular incident.

Q. Yes. Well then, could I interpret that as meaning that it may have happened or it may not, you just can't say?

A. I can't say.

Cockburn was asked about his relationship with Dassy.

MR. BYNOE. Can you think of any reason . . . he would have to make the false accusation against you?

A. I have no idea, sir.

Q. As far as you are aware, is there any animosity on your side towards Mr. Dassy?

A. No, sir.

Q. Do you know of any reason why Mr. Dassy would have any animosity towards you?

A. No, sir.

EVIDENCE OF ALEXANDER DAVIDSON

C.O. 2 Alexander Davidson did not appear in person before the Commission. His evidence was received by way of a statement obtained by one of the Commission investigators and filed as an exhibit. The statement, which of course was not subjected to cross-examination and was not under oath, read as follows:

I was born on October 30, 1917, in Aberdeen, Scotland.

I am 5'9½" tall and weigh 185 lbs.

I am married and have a son and daughter, both married.

I joined the Correctional Service on November 3, 1958, and am a C.O. 2 on the permanent staff.

I have not taken any courses during my service, but when I joined I was under the supervision of senior officers for about six months.

I have worked in all parts of the jail, up until about three years ago when I was put in charge of the dormitories which includes those inmates on temporary absence programme, kitchen work, laundry, showers, stores and gardening gang and cleaners.

All my service has been in the Don Jail.

Prior to joining the Correctional Service, I worked on the T.T.C. as an operator and dispatcher.

I work the regular hours of 160 per month and about 120 hours per month overtime.

I have not received any injuries of a serious nature during my service.

Question: Do you wish to say anything about an incident in which Mr. Dassy

alleges you and he were involved at an unspecified time, during which eggs were thrown at correctional officers by inmates and a fire was set?

Answer: I remember being told about these two incidents when I was in the guardroom.

I would say I was on the 7:00 a.m. to 3:00 p.m. shift on a Sunday, as the inmates are only served hard-boiled eggs on Sunday mornings.

I can't remember who told me about these incidents, it could have been Mr. Dassy, or it could have been any other officer there at that time.

I remember Mr. Dassy discussing these incidents with me after having been told about them.

I knew Mr. Dassy was inexperienced and I told him that if he had any further trouble with the inmates in his corridors to send them down to the dormitories and I would find some work for them to do.

He, Mr. Dassy, took one inmate down and Mr. Cockburn took two down to the dormitory where I was on duty, shortly after I spoke to them.

I asked them, the three inmates, if they wanted to work for me or go into segregation.

I gave each of them a scrubbing brush and a bucket of water and told them to get cracking on the wooden stairs and landing in the dormitory.

They did the work detailed to them and caused me no problem.

When they finished the job they returned to the corridors where they came from and that's the last I had to do with them at that time.

I can't recollect their names because this is an everyday occurrence and normal procedure.

In regard to slapping any of these inmates, I cannot recollect such a thing having occurred as I gave them a choice of doing the work allotted them or going into segregation and they did the work satisfactorily and that was all there was to it.

By the time this matter came before the Commission, inmate Leonard Wilson had been deported from Canada. The jail records indicated, however, that he was not an inmate at the Toronto Jail at the time of this occurrence. Dassy was, therefore, in error in naming this inmate. As for inmate Michael Swift, he died on May 9, 1974, shortly after the incident, reportedly of an overdose of drugs.

SWIFT SUMMARY

I accept Dassy's evidence on this allegation, that both he and Davidson "open-handed" one of the young inmates. I further find that a second and perhaps a third inmate was taken by Cockburn to the basement of the old building. The fact that a second inmate came back "crying", which evidence

I accept, indicates that he also was assaulted. By reason of the above, I do not accept Davidson's statement that the inmates were only put to work on a scrubbing detail. It would be mere speculation, however, to say which of the two officers, Davidson or Cockburn, was responsible for the assault on this second inmate or whether they were jointly responsible.

I am of the opinion that the correctional officers were attempting to ascertain which inmate (or inmates) was responsible for initiating the egg-throwing. But their conduct constituted unnecessary use of force. Other means should have been adopted either to obtain the desired information, or, if it was not forthcoming, to discipline the whole corridor. Such other means might have included depriving the corridor of privileges for a day or two (exercise, showers, television, tobacco, etc.), or having the inmates return to their individual cells from the day area at an earlier hour. Further breaches of rules or regulations could have resulted in segregation, if the wrongdoer or wrongdoers were identifiable. If not, then the full corridor should have suffered the consequences. The striking of inmates for the purpose of having them inform is not justified. Even on a pragmatic approach alone, the end would not have justified the means in this case, where the infraction was of a relatively minor nature.

The Vickers-Jesshope-Arsenault Allegation

"I told Vickers he had more tongue than a Mountie's boot, and if he didn't shut up I was going to shut him up." (Gary Dassy)

"And Mr. Dassy knew or seen that I was supposed to be classified as a wheel. I did not classify myself as a wheel because a wheel has got spokes but I classified myself as an inmate or individual. Mr. Dassy just had to prove a point in front of other inmates that this is what he tried to do." (Bertram Thomas Vickers)

"He may know his job as to open a door, to let an inmate in, to lock him up, to mark on the books, but he doesn't know his job really that well because he does not know communication." (Bertram Thomas Vickers)

"There is no exercise facilities. Fifteen-minute yard-up and walk around in a circle and that is all." (Bertram Thomas Vickers)

"The jail – they try to keep it clean by painting it and whatnot, but still it is not – it is just not a place to put somebody no matter what crime this man did." (Bertram Thomas Vickers)

"Being locked up at the Don Jail is no rehabilitation, no program. . . . What rehabilitation did he grab within that nine months or six months he was there? He got nothing. He just got a full class program of how to do this, how to do that, and how to have a chip on his shoulder." (Bertram Thomas Vickers)

The Vickers incident occurred on a Sunday in April 1974. Dassy had been on the staff for only four days. There is a great risk in putting inexperienced correctional officers on corridors without proper indoctrination and supervision. Particularly is this so when the correctional officer is an unknown quantity, not having been psychologically tested or appraised by his seniors.

The Vickers incident occurred just after supper time. Dassy was working a double shift, and for his second shift had been re-allocated to Corridor 2 from Corridor 3.

According to Dassy, "Vickers was acting up in regards to the other guard that had relieved me while I went to supper. I believe the other guard was George Thompson. . . . Vickers had refused to have the dishes brought out."

Dassy said that he "called Vickers up to the grille" and "I told Vickers he had more tongue than a Mountie's boot, and if he didn't shut up I was going to shut him up."

MR. BYNOE. And why did you say that?

A. Because he was an instigator, sir.

Q. Can you advise us what basis you have for saying he was an instigator?

A. Well, when I was there anyways 2 corridor was used as overflow from 1A [for] ones that were not considered that violent. And Vickers was more or less the ringleader I presume or — he was running the corridor as he thought it should be run, and not the way I wanted it run.

Q. Was that from your own observations?

A. Yes, sir.

Q. From your own observations, all right. You told him this and what was the result?

A. Well, an inmate by the name of Glenn Jesshope, and Wayne Arsenault, which was his two bodyguards . . . I believe it was Jesshope started up: "You're threatening inmates. I want to charge you. What is your name?"

Q. Could they hear?

A. Oh, yes sir.

Q. So it seems you broke a cardinal rule, Mr. Dassy?

A. Yes, sir.

As for the expression, "he had more tongue than a Mountie's boot", Dassy seemed rather pleased with it, as he used it on more than one occasion. With reference to the inmate Vickers having two bodyguards, Jesshope and Arsenault, there had been evidence elsewhere and also in other institutions to indicate that at times an inmate will establish himself as leader in a corridor and, somewhat akin to gangs, will have others acting as lieutenants or aides. This is, of course, something that the correctional staff should be made aware of in training and should watch carefully to ensure that the stronger inmates do not take advantage of, and terrorize, the weaker ones.

Dassy continued with his evidence.

Q. What happened then?

A. With that Sergeant McKay, Don Potter and one or two other guards, I

can't recall who they were, decided to come over to my rescue.

Q. All right. Now how did they come to come over to your rescue? How did that happen?

A. I believe there was a fair amount of commotion.

Dassy said that McKay was the assistant shift sergeant and that he would normally be in the Chief's office. He agreed that if the noise was loud enough McKay would be able to hear the commotion in the Chief's office, or he might have been in the rotunda at the time, or in another corridor. At any rate, it was not as a result of any call by Dassy that McKay arrived in company with a junior correctional officer named Donald Potter who, Dassy said, had moved to New Brunswick. Dassy also mentioned, as being present, C.O. 2 Wayne Smith.

Q. The three officers you have related entered the landing area outside of Corridor No. 2, is that right?

A. Yes, sir.

Q. What happened then?

A. They took Jesshope out.

The Corridor 2 log book for April 14, 3:00 to 11:00 shift, contained the following entries, all signed by Dassy.

5:55 p.m. Vickers to see Chief

6:00 p.m. Vickers back

6:05 p.m. Jesshope out Segregation cells

6:15 p.m. Arsenault out

6:20 p.m. Arsenault back

There was a further entry of interest. At 6:40 Dassy indicated that he patrolled and found "all quiet".

Before Jesshope was taken to the segregation cells there were 17 inmates in the corridor. The 3B segregation log for the same shift indicated that at 6:05 p.m. Jesshope was admitted from Corridor 2 in the charge of McKay and Moquin, both senior officers.

Dassy stated that "Vickers was taken to the Chief in the rotunda with Potter. I didn't go out." Dassy said that Vickers came back about five minutes later, and he (Dassy) charged Vickers.

Q. Do you know what you charged him with?

A. About three charges, sir. I recall [it was] the first charge I had to write and Donald Potter had to help me with it, sir.

Q. So you specifically remember that one?

A. Yes, sir.

Q. Okay. Now do you remember what he was charged with? . . .

A. Not offhand, sir.

Mr. Bynoe said he had been informed that a search had been made and

there was no record in the charge book of any charge being made.

Dassy confirmed that he also had looked and that no charge was entered in the charge book.

The fact that Vickers did not go to segregation and that no charge was in the book might indicate that whoever heard the matter did not consider the charge warranted; and, if three charges were laid, as Dassy said, then it would mean that none of the charges was considered warranted. At any rate, as has been mentioned elsewhere and brought to the attention of the senior officers at the Toronto Jail, a charge that is laid or a Misconduct Report that is completed should be kept on record even if the charge is dismissed or is not put before the Superintendent.

Q. Mr. Dassy, you had no direct knowledge about the charge other than that you remember signing or making out a Misconduct Report because Mr. Potter had to assist you with it?

A. Yes, sir.

Q. And you remember that Wayne Smith was the one that witnessed it?

A. Yes, sir.

Q. And you don't know what the disposition was?

A. No, sir, I never found out. I have an idea that I was wrong in what I had said to Vickers in front of witnesses. I figure it could have been ripped up.

Q. And they may not have proceeded with it?

A. They could very well not have, sir.

Q. Well, when a person is charged isn't he automatically put into the segregation area?

A. Not automatically sir, there is nothing in the rules that they have in that jail.

Q. Can you think of other cases where a person who is going to be charged is not first taken to segregation?

A. One or two come to mind, sir.

Q. Just one or two over your entire period?

A. That I know of, yes, sir. I don't know what the offences were for but they were charged and they weren't put in segregation cells.

Dassy described an incident that occurred about a week later when he took Vickers into one of the broom closets.

Q. Now then, with respect to Vickers now, do you recall having any subsequent conversation with Mr. Vickers?

A. I got Vickers up in a broom closet about a week later in 3 and 4 corridor in the morning.

Q. All right. You took him up there?

A. No, he came up there. . . . I believe he asked me for something and I said it would probably be in the storage cupboard. . . . He went in there, sir, and I went in behind him and closed the door.

Q. Yes?

A. I told him I thought he was pretty smart the previous week, did he want to try anything more?

Q. There were just the two of you in there?

A. Yes, sir, just the two of us.

Q. What was his reply or reaction?

A. He was very scared, sir, he didn't want no part. He said he was sorry and would never do it again, and I let him go. . . .

Q. Apart from threatening him, did you apply any force to him, for instance?

A. No, sir.

Dassy was questioned further about Jesshope.

Q. So Mr. Jesshope then observed you threatening an inmate and advised you that that was wrong, and that he was going to charge you?

A. Yes, sir.

Q. Now according to your knowledge of the regulations was that a proper statement for him to make?

A. Yes, it is, sir. At the time I didn't know what was going on in the jail, but after reading the regulations, I believe he had the right.

Q. He had the right to do it?

A. Yes, sir.

Q. Had he done anything else, had he committed any offence against the regulations personally himself?

A. No, sir. There is one regulation he broke, though, sir.

Q. What is that?

A. That is to counsel other inmates to commit an act, which he can be charged for.

Q. I haven't heard anything about him counselling inmates or at least I don't recall any.

A. That is what he would probably be charged for, sir, because that gets you every time, that one.

Q. What was it that Mr. Jesshope did to counsel somebody?

A. Other inmates. He told them not to do anything, just to stay there; not to move dishes, sweep the floor and so on and so forth.

Vickers was the corridor man and Dassy related that he told him, as well as Jesshope and Arsenault, that he did not want Vickers to be the corridor man any longer. It is considered a privilege to be a corridor man in the jail, in view of the general lack of activity. The corridor man is able to move about more freely and get extra rations in the kitchen, and to feel a greater sense of dignity than those who just idle in the corridors.

When Dassy advised Vickers that he was no longer corridor man, this deprived him of his duties and benefits, and it degraded him in front of other inmates. As a counter-reaction, apparently, Jesshope advised all in the corridor that no one should take out the dishes, which was one of the duties of the corridor man.

It is easy to see that, in the close confines of the corridor, a small incident can easily blow up into a big one. The fact that Jesshope counselled the disobeying of an order to remove dishes could become a serious matter and one in which there would have to be a showdown, and Jesshope would have to

be removed from the corridor and placed in segregation, as a warning to other inmates that orders were to be carried out. However, if Dassy had not originally stripped Vickers of his duties the whole incident might have been avoided. The question arises whether a more experienced correctional officer would have done what Dassy did or played it cool.

Dassy was of the opinion that McKay or Potter made out the charge against Jesshope. According to Dassy, one of the reasons Jesshope was charged was that he wanted to lay a complaint about Dassy's conduct.

Q. Is there anything else that you can advise on with respect to Mr. Jesshope?

A. I was told afterwards by Potter that he still wanted to charge me, and that is why he was taken to segregation cells under another charge for himself.

Q. I'm sorry, I didn't hear that?

A. I was told by Donald Potter afterwards that Jesshope wouldn't change his mind about charging me, so they charged him and put him in segregation.

The log for 3B segregation indicated that Jesshope was taken there. As for Arsenault, Dassy stated, "He was the third member to be called out and I have no idea what was said to him. I imagine he was given a choice of joining Jesshope in segregation or withdrawing his complaint [against Dassy] and I believe he withdrew his complaint because he came back to 2 corridor."

This seemed to have been speculation on Dassy's part. Finally, Dassy said,

A. I was told you know I had gone wrong in threatening Vickers in front of the other inmates and I believe it was Smith that told me that, sir.

Q. Yes, now is there anything else that you can add about that particular incident.

A. No, sir.

EVIDENCE OF BERTRAM THOMAS VICKERS

Vickers was 28 years of age, born and raised in Ontario. He said that he was unmarried, that he ran away from home at the age of 14 and came to live in Toronto. He finished Grade VIII at an outside school and then continued his education and completed Grade X and three-quarters of Grade XI at the Adult Training Centre in Brampton.

His criminal record dated back to 1966. He had the appearance of one many years older than his stated age, and this may have been a result of the difficult life he had led.

He stated that he entered the Toronto Jail on October 11, 1973. He had been arrested on a charge of assault occasioning bodily harm on October 8 and he returned to court on the 11th and was then detained without bail. On

January 28 he was sentenced to 10 months. He remained at the Toronto Jail for about a month, and in February or March was sent to Mimico to serve his sentence. After about two weeks, at his own request so that he could be more conveniently visited, he was returned to the Toronto Jail to serve the remainder of his sentence. He went back to court on April 17 and was sentenced to 30 days consecutive for a drug offence.

Vickers said that he remembered the incident related by Dassy "quite well".

MR. MCRAE. What were you doing and what occurred?

A. Well, we just finished our meal, and Mr. Dassy had stated – or put me off corridor man.

Q. You had been corridor man?

A. Right, because I was doing my time there and I wanted to work and I did the work to get me outside the corridor. So it is a different environment, a different scenery. And he took me off of corridor man, and he had nobody for corridor man. The dishes were all in a tray, ready to be taken out, and he wanted the dishes out. There was a big commotion, the inmates themselves, about who was going to take the dishes out, and nobody was going to take them out. He hollered my name out, and he stated to me – I was walking towards the grille where he was standing . . . hollering my name, and I walked up and I said, "I beg your pardon?" very politely to him. He said, "You've got a big mouth. I'm going to take you downstairs in the dungeon and beat – I'm going to beat you" or some line this way. He was going to beat me, he threatened.

Q. Before we get to that, is it possible that you were a little miffed that you had been taken off corridor duty?

A. Well —

Q. Just a minute now, and you had organized the other inmates not to co-operate with him and have no one take the dishes out? . . .

A. No, because it happened so fast that the dishes weren't taken out, he was not pleased that no one took his command so he grabbed my name; so as far as I was concerned, if he wanted the dishes out he could have said, "okay, take the dishes out", and I would take the dishes out. As far as I was concerned I was no more corridor man, and I had no concern of the dishes, and when he did holler my name, he fell back on the idea that I was supposed to be the leader of the corridor, so like for me to tell somebody to take the dishes out or just push them out. Nobody touched the dishes. The dishes were just left, and all the inmates just sat around, and a few inmates come towards the grille because he was hollering in a high tone. You could hear him all over the —

Q. Hollering to take the dishes out?

A. He was hollering my name, and he come very strong on me about what he was going to do to me.

Q. Right.

A. I seen that he was mad, and the only way – instead of being that smart – smartass towards him, I reversed it, and I was very polite to him. And as I was being polite to him, it was getting him under the collar – it was getting him very hot.

Q. Even more upset?

A. Yes. . . .

Q. He didn't expect you to be polite?

A. No. That I was – I was going to get him all the hotter. He then says, "Get out here", and he opened the grille and grabbed my arm, and he pulled me – or not pulled me; I was walking – pulled me in the direction going down the corridor.

Q. All right.

A. He then walked over to the phone and picked up the phone. I don't know who he talked to on the phone.

Vickers then related that when Dassy put the phone down he said, "Come with me." Vickers said he followed him and they stopped outside a storage area or cupboard opposite Corridor 7, "and he told me to get a pail with some water and scrub brush".

Vickers repeated what Dassy had told him at the time of taking him out of Corridor 2: "He said he was going to take me down to the dungeon and he was going to punch me out."

Vickers indicated that the dungeon referred to the old segregation cells in the old part of the jail which were used for the storage of old beds and furniture and were rarely used as segregation cells.

Q. What was your reaction to that?

A. I smiled.

Q. You smiled?

A. Yes. It was the only way. Why react against him because he would just bring me down there, he probably would take me down. I figured well, I would be smart, that was the way to get around that, just smile and be smart.

Q. Okay.

A. So I was pulled out. I didn't know, I thought I was being charged or I was going to go over to the segregation cells, but I did not know what for, because there was no charge that he could put on me.

Vickers then continued his narrative:

A. I got the pail of water and a scrub brush and he brought me right back to the beginning of the dome over on this side.

Q. The grille between the dome and the landing outside number 2 corridor?

A. And he told me to get on my hands and knees and scrub the floor.

Q. Why would he tell you to do that?

A. To belittle myself.

Q. Any other reason? Was that the usual thing?

A. I think, if I could say my opinion, the reason why he did that was there could be no charge he could put on me and it was a good way to get a charge because if I refused he could charge me for refusing. It was the only thing he could fall back on, for me being polite, actually smart in a way, to him.

Q. So you felt he wanted to humiliate you?

A. In the presence of the other inmates. Not even our inmates, there were

inmates on the other side. . . .

Q. What was your reaction to that?

A. I just was not going to scrub the floor. There was no way I was going to get on my hands and knees. When a guard asked me to do something, to work, I would do it because I wouldn't mind doing the work, it passes my day along a little better. But not for this, I was not going to get on my hands and knees so I had to think of an excuse to get out of scrubbing the floor.

So I stated to Mr. Dassy, I said, I'm sorry I can't scrub the floor. He said, are you refusing? Now that was his leeway to get the charge on me if I said yes I was refusing.

I stated, no, I had a bad knee, I had cartilage in my knee. That was the only thing I could think of at the time to stop me from getting on my hands and knees to scrub the floor. So he brought me back to where the hospital is.

Q. The medical examination area?

A. Right. And he talked to the nurse.

Q. What was his reaction when you told him that you had a bad knee?

A. He was really hot, really mad.

Q. Right.

A. He brought me to the nurse and he said he wanted to check my knee out and the nurse stated that the doctor was not in and we would have to wait for the doctor. Well, he just about-turned and said come on. I went back to the other side of the corridor.

Q. Through the dome?

A. Right, to our corridor. He told me to grab a broom and a dust rag and to do the bars, sweep up the outside part of the landing. I did not mind doing that because at that time I was outside. So I did what he stated. Now before this, I think, what really made him mad was that Jesshope, another inmate that was in our wing, was standing beside me when Mr. Dassy threatened me. And Mr. Jesshope said, "Are you threatening the inmate?" and he said, "I want to know your name." He asked Mr. Dassy for his name and Mr. Dassy said it's Dassy, D-A-S-S-Y. He was very mad at the idea that Mr. Jesshope asked him for his name.

Q. Was this before you came out of the corridor?

A. Oh, yes. Well, it upset the whole corridor, because the inmates – well, there was nothing wrong, there was nothing doing. Mr. Dassy got on our wing and that was it. But after this episode Mr. Dassy was taken off of our corridor and put on another corridor. I have never seen him from then on our corridor and there was no trouble.

Vickers said that he was not turned over to McKay and no other correctional officer was involved. The evidence of Dassy was then read, in part, to Vickers. He denied that he was the ringleader, and as for Jesshope and Arsenault being his bodyguards, he said, "I don't really need bodyguards." He did, however, agree with one aspect of Dassy's evidence.

MR. BYNOE. Then [Dassy] says . . . "I told him I was going to take him out and hit him." And then . . . "I believe it was Jesshope started up. 'You are

threatening inmates. I want to charge you. What is your name?' " Did that happen?

A. Yes, it did. Jesshope was more or less, he was a very intelligent person. The inmates, like I said, the inmates just did not get along with Mr. Dassy and I guess this was the only way that Jesshope figured to legally do it, was to come out to him this way because he got him threatening another inmate.

Vickers confirmed that Jesshope was sent to segregation. He said that Jesshope and Arsenault both went out to the rotunda but Arsenault came back into the corridor.

Vickers gave his opinion of the confrontation between Dassy and himself:

A. Maybe it was because I was one of, like it says, the main persons in the corridor. Things went along good in any corridor I was in and he knew this, Mr. Dassy knew this. Maybe he tried to prove to other people he could shut me down or put me down and the other inmates would go along with his word, what he says. . . . When I was taken off as corridor man, he took me off as corridor man, when he asked for dishes out, I am not taking them out. I am not the corridor man, I don't be bothered taking them out, so I did not even bother to move to take them out.

THE COMMISSIONER. Yes.

A. This made him very mad because they were not being taken out at the time. I don't know if there was any inmate, I really can't say there was an inmate said to any other inmate, "Don't take dishes out," because as soon as you say that, the guard can charge you.

Q. Jesshope was charged.

A. He was charged but I don't know what . . . he was charged for. I think the only reason they charged him was because he asked Mr. Dassy at the time Mr. Dassy was talking to me for his name.

Q. That is not an offence, is it?

A. This got Mr. Dassy very, very hot under the collar.

Q. But that would not be an offence for which he could be charged, would it?

A. There are charges you can make and bring up that you don't even know about. They bring them up.

A search was made and there was apparently no record of a Misconduct Report involving Jesshope. This might indicate that after an investigation he was released from segregation and no charge was made out against him, and therefore the Misconduct Report was destroyed. Once again, it is strongly recommended that all Misconduct Reports be kept so that the disposition of any charge can be recorded.

As for the cause of this incident, it was the fact that Dassy had removed Vickers as corridor man. There was another incident (involving inmate Malayny) that began in much the same way, when the inmate was removed as corridor man, or assistant corridor man.

THE COMMISSIONER. Can you tell me why Mr. Dassy took you off as a corridor

man?

A. Well, I am known at the Don Jail to all the inmates. I get along with every inmate there is there. I am known to all the guards too. More or less the inmates would be with me and the guards would, you know, like help me out with whatever I needed, like anything. And Mr. Dassy knew or seen that I was supposed to be classified as a wheel. I did not classify myself as a wheel because a wheel has got spokes but I classified myself as an inmate or individual. Mr. Dassy just had to prove a point in front of other inmates and this is what he tried to do.

Concerning his "politeness" in answering Dassy's "hollering", Vickers was asked:

THE COMMISSIONER. Were you being polite for the purpose of trying to quieten Mr. Dassy down or to try and aggravate him further?

A. No, I was being polite because I figured that was the best way to be at the time, before I got into any more trouble with Mr. Dassy.

In cross-examination, Mrs. Peters brought out the fact that Vickers' "politeness" to Dassy was something which he knew would make Dassy angrier; but Vickers attempted to defend this action of his on the grounds that "if the man got mad or hot under the collar from politeness, then there is something wrong with the man. If he couldn't control his temper, that is not my thing." This action on Vickers' part, knowing what the result would be, was within the ambit of the games some inmates play against correctional officers.

Vickers indicated that he was not angry when Dassy took him off duties as a corridor man and that he had been taken off these duties on other occasions. He also indicated that he had been corridor man for two or three weeks and all of a sudden this "advantage" was taken away from him by a new correctional officer. He repeated that it was because of Dassy's "hollering and screaming" that "the whole wing" became upset.

Vickers also made mention of an incident while he was in segregation involving some screaming by an inmate. He said that this emanated from the elevator region and that what the inmate said was, "Leave me alone. Don't hit me." Vickers said that he was in segregation on four different occasions. He thought that the episode occurred in 1972. Investigation was made and there was insufficient detail to link this alleged incident with any correctional officer. So it was impossible to test Vickers's statement.

Mr. McRae said that the inquiry into the Vickers incident would not go beyond the evidence of Dassy and Vickers. He explained:

MR. MCRAE. It seems that this was an allegation made by Mr. Dassy and therefore specifically covered in your terms of reference. There was no suggestion by Mr. Dassy or anyone, including Mr. Vickers, of any impropriety on behalf of anyone other than Mr. Dassy himself. The impropriety alleged was Mr. Dassy's allegation originally that he threatened to do physical harm

to an inmate.

This is corroborated by Mr. Vickers and while no harm was ever done and no physical violence was ever used on Mr. Vickers, since it was specifically one of Mr. Dassy's allegations we thought that we had to call him and lead that evidence before you, sir. And that's the reason why we have done it. It was alleged by Mr. Dassy and denied by Mr. Vickers that Sergeant McKay took custody of Mr. Vickers.

McKay was interviewed but was unable to recall any involvement whatsoever in the incident.

Dassy had also made mention of C.O. 2 Wayne Smith, who was interviewed. Mr. McRae commented as follows:

MR. MCRAE. Mr. Dassy also alleges that Correctional Officer Wayne Smith had custody of Mr. Vickers, and Correctional Officer Smith was interviewed. . . .

And he can recall Mr. Dassy saying to Vickers, "You have more tongue than a Mountie's boot," or words to that effect. It was the first time that Correctional Officer Smith ever worked with Dassy. He did not recall the problem of Dassy with Vickers. But he knew that Dassy was a new man at the time and told him that at any time he was having trouble with the inmates he should report the inmates to the white shirt on duty.

Some of the inmates were asking to see someone in charge. He does not know if their requests were directed to him or to Mr. Dassy. [Smith said:] "I cannot recall the inmates telling me why they wanted to see the officer in charge, but I can remember three or four inmates being there. One of them was Jesshope. Either myself or Mr. Dassy went and got one of the white shirts to come up. A white shirt came up and two or three of the inmates were taken to the dome to be interviewed. I was not present during the interview."

This is all he could recall of the incident.

The statements of McKay and Smith were also outlined by Mr. McRae and it was agreed by all counsel that it would not be necessary to call them as witnesses. It was also agreed that Potter need not be called to attend from New Brunswick. Neither Jesshope nor Arsenault could be located.

VICKERS - JESSHOPE - ARSENAULT SUMMARY

In addition to the reasons of relevancy given by Mr. McRae, the Vickers-Jesshope-Arsenault incident is included to show the duties of inmate corridor men and the misinterpretation by Dassy of the duties of correctional officers, and for the insight it gives into relations between correctional officers and inmates.

As for the allegation that Jesshope was charged because he threatened to

report Dassy, this proved to be of no substance. He may originally have been taken to segregation when it was thought he was counselling the disobeying of an officer's order. His release without a Misconduct Report being completed would no doubt indicate that senior staff considered that this "charge" had not been substantiated.

The Vassell Allegation

"I took him through the passageway with my hand on his hair at the back of his head, holding on to his hair." (Gary Dassy)

"I was travelling as fast as I could and I was looking behind me and I wasn't really looking ahead and when he caught up he kicked me again. . . . I had to wait where I was going to turn next, as soon as he gets there he kicked me again." (Fabian Vassell commenting on Dassy's actions)

"I never said anything to anyone and I tried to forget all this." (Fabian Vassell)

EVIDENCE OF GARY DASSY

Fabian Vassell was an intermittent inmate. That is, by judicial order he was allowed to serve his sentence at intermittent periods instead of at one continuous time. Usually this would be on weekends, with an inmate often reporting Friday evening and leaving Monday morning; in this manner, such an inmate could receive credit for four days towards a sentence of up to 90 days. His ability to work and earn a livelihood during the remainder of the week was not interfered with. It was Dassy's evidence that an incident involving Vassell occurred during a weekend in the latter part of May 1974.

During a search of 11 dormitory (near Corridor 11) drugs were found secreted in shoes belonging to Vassell. This dormitory search is also referred to in the Martin and Bible allegations. Dassy was not involved in the search. His part was limited to escorting Vassell later to segregation.

Dassy said he was on his way to 3B segregation, to which he had been assigned, and was passing near the reception cell opposite Corridor 8 when a correctional officer asked him where he was going. When he said he was on his way to 3B he was asked to take Vassell with him. He said that he took Vassell through the basement corridor over to the new building.

MR. BYNOE. How did you do that?

A. By the hair, sir.

Q. Well ——

A. Part of the way by the hair.

Q. Would you describe how that occurred?

A. Well, I just had him by the scruff of the neck back here, and walked him over to the elevator.

Q. Is that what you mean when you said you had him by the hair?

A. Yes, sir, I guess so. By the scruff of the neck. His hair is quite long so I guess his hair was there too. . . .

Q. Did anything unusual happen during the course of your trip?

A. No, sir. I don't believe so.

Q. Was Mr. Vassell resisting in any way?

A. No, sir.

Q. What happened then?

A. I hollered for them to hold the elevator. That there was, oh, maybe eight guards in there.

Q. Yes.

A. So they did, and I pushed Vassell into the elevator and he went in up against some of the guards.

Q. In what fashion?

A. Well, just like he fell against them in the elevator.

Q. You pushed him?

A. I pushed him into the elevator.

Q. As a result of the push ——

A. Yes, sir.

Q. —— he went into the elevator and bumped up against some of the guards.

A. Yes, sir.

Q. What happened then?

A. There was a few elbows thrown at him, sir.

Q. Yes.

A. The only one I could identify would be [C.O. 2] Ed Dowhey. . . .

Q. What happened then?

A. Vassell got hit a couple of times with elbows by Dowhey, and the other guards, I can't recall. Dowhey being the biggest in the jail in size he stood right out. . . .

THE COMMISSIONER. Was this in the nature of just pushing him away?

A. Not in the normal sense of pushing him away, sir. There was force used to push him, not that he was shoved to push him back off him but a jostling match in the elevator with Vassell.

Dassy said that the elbow of Dowhey struck Vassell in the chest and that he (Dassy) was not holding Vassell at the time.

Dassy's evidence continued:

Q. What effect, if any, did the blows from Mr. Dowhey have on Mr. Vassell?
A. None, sir, because they were not blows. They were elbows. I don't believe he punched him at all, but you have seen in hockey, I guess it is, you throw an elbow into a person.

Q. What was the degree of force that was used by Mr. Dowhey?

A. Enough to push him.

Q. Push him away?

A. Up against the other wall of the elevator, back towards me.

Q. Did Mr. Dowhey say anything to him?

A. "So you're the one with the drugs? You're one of the ones that brought drugs into the jail?"

Q. Yes. Was there any other conversation then?

A. I believe I asked Vassell afterwards, on the B landing, what kind of drugs he brought in. I don't know if I told you this or not. But he told me it was Valium for his own personal use.

Q. Yes.

A. Because of a car accident and a whiplash he had received. . . .

Q. Now, Mr. Dassy, are you sure that the only blows that you saw or the only force that you saw applied on Mr. Vassell was the elbows in the vicinity of the chest that you have indicated?

A. Yes, sir. I don't believe – or that I could recall any punches being thrown. As I say, the elevator was filled. There could very well have been. I don't recall it if I said there was punches or not, sir.

Dassy was then shown a statement he had made in an interview with Commission investigators on November 28, 1974. This was 11 days before he gave evidence *viva voce* on December 9, 1974. The statement read as follows, and was acknowledged by Dassy:

MR. BYNOE. "I took him through the passageway with my hand on his hair at the back of his head, holding on to his hair. The elevator was there with approximately six to seven guards on it. I put him into the elevator none too gently, and he landed up against Ed Dowhey, one of the guards. Mr. Dowhey then proceeded to hit him two or three times with a closed fist . . . in the stomach with words to the effect, 'So you're one of the [deletion] that brought in the drugs?' " And I was just showing this to the witness to refresh his memory in this regard and to ascertain, firstly, are those the words that you used when you were relating the statement to us, Mr. Dassy?

A. Yes, sir, I believe I was.

Q. Now you have indicated, I think, today that the only force that you saw applied to Mr. Vassell was elbows in the vicinity of the chest, and on the other occasion you indicate that he was punched with a closed fist.

Dassy was then asked about the statement and about the evidence that he was giving *viva voce*:

Q. He was hit . . . two or three times with a closed fist?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Now are you able to advise the Commission as to what happened? What version is correct?

A. I know he was hit with elbows by Dowhey, sir, and he was hit with closed fists, but I wouldn't attribute that to maybe Dowhey.

Q. Do you have a specific recollection then of Mr. Dowhey hitting Mr. Vassell with a closed fist?

A. I wouldn't want to say, sir, no.

THE COMMISSIONER. Mr. Dassy, when you make allegations like that and your recollection isn't clear, it could be quite misleading.

A. Yes, sir. I realize that. That's why I'm saying if I don't remember the incident. There is no way I am going to say Dowhey hit him, if I can't remember.

Q. A few days ago apparently you did make that statement.

A. Yes, sir, I did, I believe.

Q. You see the difficulty when you make statements you are not sure of.

A. Yes, sir, I realize that. It's just that so much has been going on. . . .

Q. Is there anything else [to] add now, Mr. Dassy, with respect to Fabian Vassell?

A. No, sir.

As can be seen, there was a significant difference between the statements given by Dassy on two occasions very close in time. With reference to the statement given orally at the hearing, there are two matters of note. One is the method in which Dassy was escorting an inmate, either by the scruff of the neck or by the hair, and this was an inmate who, admittedly, was giving him no trouble. This type of conduct on the part of a correctional officer is to be deprecated as it sets a bad example and creates an unfavourable atmosphere in a jail. It is, of course, an affront to the dignity of an inmate, if he is not causing any trouble, to be escorted in this manner.

As for the incident in the elevator, it was obvious that Dassy threw or pushed Vassell into the elevator up against correctional officers and the statement given *viva voce* would indicate that Dowhey's reaction was no more than to push him away. However, the statement given 11 days earlier to the Commission investigators indicated physical assault on Vassell by correctional officers in the elevator.

The first was a defensive move with little or no significance. The second

would be active and unwarranted, particularly since the inmate had been pushed by a correctional officer into the elevator. The latter action was admitted by Dassy in his oral evidence.

EVIDENCE OF FABIAN McLAUGHLIN VASSELL

This inmate was born in Jamaica and was 22 at the time of giving evidence on February 27, 1975. He came to Canada in June 1971 and his occupation was that of radio technician. In May 1974 he was convicted of driving while disqualified and sentenced to 14 days to be served intermittently on weekends.

Vassell was housed in 11 dormitory, which was used at that time for intermittent sentences. The records indicated that he was admitted on Fridays and examined each following Saturday morning by one of the jail doctors. It was recorded that his neck movements were slightly limited, but that the remainder of his examination was negative. Vassell had sustained an injury to his neck in a motor vehicle accident in October 1973. He said that tablets were prescribed by the doctor at the Toronto Jail and that they were similar to those that had been prescribed by his own doctor.

On the evening in question, Vassell said, he did not have anything to eat, but he did have two pills. He said the pills were to be taken "one when necessary". He went to sleep and then:

A. I was taken by a guard, sir.

MR. BYNOE. In what fashion?

A. That happened so fast and I was sleeping. He pulled me up and says, "Get up", and I got up and started wiping my eyes and looked and saw these guys lined up.

The people who were lined up were the other inmates in the corridor.

Vassell said that a correctional officer was holding his shoes and asking if they belonged to him. The shoes had been at the side of his bed. A photograph of the shoes, showing high heels with eight punctured holes in each heel just under the lower cover of the heel, was filed as an exhibit.

Q. You have indicated that a guard that you cannot identify . . . held up some boots or shoes and asked you if they were yours and you indicated yes.

A. Yes, sir.

Q. And what happened then, Mr. Vassell? . . .

A. I was pulled out of the bed and I think I was being kicked because I was running ahead and I was trying to keep ahead of them. Then I was taken

upstairs and was locked up in another cell, which they took the bed out of, and I had to stay there for the night, the rest of the night.

Q. All right. Now, you say that you think you were being kicked. Why do you say that?

A. Because from what I can remember, I was running ahead, like I don't know who did it you know – like I think there was a white shirt man there, but I am not even too sure about that.

Q. Well, then, on May the 25th, were you really under the influence of drugs?

A. Possibly, sir.

Q. And would it be fair to say that you were pretty high?

A. I don't know what you mean, sir.

Q. Well, do you think that your faculties were affected or impaired as a result of your taking the drugs?

A. Yes, sir.

Vassell's evidence was unsatisfactory because of its vagueness.

A. . . . after when they pulled me out of the bed, you know, they probably hit me, then I run ahead and they wanted to kick me, then I started running ahead, waiting to see where they were going to take me and as soon as they were getting close they probably kicked me. . . .

Q. So you are now rationalizing, firstly, that you were running and you were running because they had hit you?

A. Yes.

Q. And that you were running to keep ahead of them so that they couldn't kick you?

A. Yes, sir.

Q. But you don't remember this specifically?

A. No, sir. . . . You see, as I told you before, I tried to forget all about this. I never said anything to anyone and I tried to forget all this.

There was further evidence of a rather indefinite nature. Vassell mentioned another inmate with the last name of Morris.

A. . . . and he came to me and asked me what happened, and I just suggested that they beat me up.

Q. Who beat you up?

A. The guards.

Q. When?

A. The same night. During the occurrence.

Q. During the occurrence? And this was in 11 dorm?

A. Yes, sir.

Q. If he was in 11 dorm and you were beaten in 11 dorm why did you have to tell him what happened in 11 dorm? He would have seen it, wouldn't he?

A. I guess so, if he was there too. . . . Then I asked him what happened and he told me the same thing happened to him, sir.

THE COMMISSIONER. Did he say where this happened to him?

A. No, sir.

MR. BYNOE. For your information, Mr. Commissioner . . . with respect to this man [Morris], we have been unable to . . . serve him with a subpoena, and we are advised that there is a warrant outstanding for his arrest with respect to breach of probation.

Vassell stated that an hour or two after his conversation with Morris he was taken downstairs by the correctional officers. He was asked where he was beaten and advised that he could write out a statement. He did so, and a photocopy of the statement was filed as an exhibit. The gist of the statement was that he had been ill since an automobile accident in October 1973. Drugs had been prescribed by his family doctor, and when he entered the Toronto Jail Vassell gave some medication for safe-keeping to one of the correctional officers, which he said was to be given to him, but it never was. He said he was in "great pain" during the first night. He called a correctional officer who then "got a nurse" and gave him one tablet "to relax me". He said he never got anything further. He stated that during the following week, "knowing if I don't have the pills I would be in great pain", he put six tablets in the heel of one of his shoes. This was to last him for three days. The statement also contained the information that he was shown "some other tablets" which he stated he had never seen before.

The statement seemed to indicate that he had enough tablets to last four days, and yet that he was to take three tablets daily. This would be a total of 12 tablets – twice the six that he said he had secreted in one of his shoes.

Vassell referred to the tablets as Vivols. According to the nurses' book, Vassell's pills were Valium.

Vassell was questioned about the disposition of the six pills that he said he had in his shoe. He indicated that he took one on Friday night, one on Saturday morning, and two before he went to sleep later on Saturday. This would be in the evening. At another time he said he also took one at about midday on Saturday, and this would account for five pills, although there was other evidence he gave to the effect that he had only consumed four pills and had two left in his shoe when the search was on.

His evidence was not consistent on this point. He even indicated that he would have had three left for Sunday and one for Monday which, together with those that he had taken, would have added up to more than six.

The investigation report of C.O. 2 David McNeight, Part 2 of the Misconduct Report, stated that two 5-gram Valiums were concealed in the perforated heels and it further mentioned that Vassell had taken some pills because "he was in pain and didn't like going to the surgery".

Mr. Mulhern, who presided over the hearing the next morning, May 26, found Vassell guilty and ordered him to serve the balance of his intermittent sentence in close confinement and on special diet. It was further indicated in the disposition, which is Part 4, that loss of statutory remission would have been applied if Vassell had had any such credit.

Vassell said Dassy took control of him in the area outside Corridors 7 and 8.

Q. Now, would you tell the Commission what happened after that?

A. Well, when he took me out there, he held me by my hair.

Q. In what fashion?

A. Like this.

Q. You are indicating that he grabbed your hair, is really what you are saying, in a fist; is that right?

A. Yes, sir.

Q. What part of your hair?

A. The top.

Q. The top? All right. We have heard some evidence that your hair was longer and that it was really at the scruff of your neck. What can you tell us about that? At the back of your neck?

A. Not much. It's just about the same.

Q. It's just about the same way as what?

A. As it is now, except when it is not combed it's a lot longer. . . .

Q. You are indicating your head was to one side; is that right?

A. Yes, sir.

Q. All right. Now what happened then?

A. And he was leading me along and then he let me go and kicked me.

Vassell also indicated that he was being held by Dassy and punched at the same time.

A. He held me like this and was punching me like that.

Q. He held you with one hand and was punching you with the other; is that what you are indicating?

A. Yes.

Q. He was punching you where?

A. In the side, sir.

Q. In the side. What degree of force was used? Could you tell us about that?

A. Enough, sir.

Q. Enough. Well, you are smiling. Did it make you smile or did it cause something else?

A. Well, it didn't at the time.

Q. It didn't at the time.

A. I was in pain, sir.

Q. You were in pain. Had you said anything to this man prior to his grabbing your hair and hitting you in the fashion you've described?

A. I was telling him my neck was sick, sir. . . .

Q. Did he say anything after you had told him that?

A. No, he just continued hitting me.

Q. Can you tell us about how many times he hit you?

A. Three or four times.

Q. Now, then, what happened after that?

A. And then he let me go.

Vassell explained that he was somewhere in the vicinity of the elevator in the basement of the new building.

A. I was travelling as fast as I could and I was looking behind me and I wasn't really looking ahead and when he caught up he kicked me again. . . . I had to wait where I was going to turn next, as soon as he gets there he kicked me again.

Q. Where did he kick you?

A. In my behind, sir.

Q. In your behind. All right; and what degree of force was used?

A. Well, I would say what he could apply, sir. . . .

Q. What effect did the kick have on you?

A. Just pain.

Q. Did you lose your balance, or fall, or anything like that, Mr. Vassell?

A. I don't remember falling. I could have stumbled. I don't know.

Q. You say this took place in front of the other guards?

A. Yes, sir.

Vassell had alleged that "about four correctional officers" were present before the elevator arrived. He said that, in front of the others, Dassy was accusing him of being a drug addict "or something like that" and he said that the other correctional officers then joined in, hitting him with their fists.

Q. How many struck you?

A. I am sure of one more, sir.

Q. One more?

A. I know. Well, it is two of them, one was continuous, the other one was as if he was just following the other one by hitting me as well.

From the photographs, Vassell identified C.O. 1 Alexander Sills as one of the correctional officers who struck him outside the elevator, in addition to Dassy.

Vassell said that when the elevator arrived he tried to get in first, "trying to get where I was going as quickly as I could". He stated that Sills was standing to his right and Dassy to his left and that Dassy then struck him in the stomach.

Q. What effect, if any, did it have on you?

A. Well, just pain.

He said that when Dassy did that, Sills, seeing it, "came up and started putting in lefts and rights". These punches of Sills, he alleged, were with a closed fist.

Q. How many; do you know?

A. Well, I wasn't counting, sir; I was just trying to protect myself. . . .

Q. You are indicating you covered your head and put your arms in front of you; is that right?

A. Yes; and I was telling them my neck hurt, sir, and they wouldn't stop.

Q. You used the word "they" and I interrupted you when you were going to tell us, after Mr. Sills started hitting you with lefts and rights, you said something about Mr. Dassy?

A. Yes. . . . He was hitting me with his elbow.

Q. Whereabouts?

A. Well, like I say, I had my hand like this. I couldn't say where and when it hit. I was trying to protect myself, you know.

Q. Covering yourself?

A. Yes, sir.

Q. What happened then?

A. And there was one of the guards there who hit me, but he couldn't have hit me — one or two times, which he did, which I think he did, but —

Q. I gather from what you say you are not sure whether this man hit you or not?

A. I know he did, but how many times I don't know. Could be once or three times.

Vassell indicated that this correctional officer was C.O. 2 Edward Dowhey. He said Dowhey struck him while he was in the elevator. As for the number of times that he was struck by Dowhey, he answered, "Couldn't have been more than one or two times. But I know he had a part in it. Like he was hitting me as well, sir."

Vassell thought that Dowhey might have been in the elevator before he entered. In any event, he said that he did not bump into anyone.

Commission counsel brought out the fact that Sills, against whom Vassell was making an allegation, was a West Indian like Vassell and that the treatment Vassell was getting was not because of his colour, to which Vassell agreed.

Vassell estimated that altogether eight blows were landed on him.

A. I was crying and I was in pain.

Q. Were you bleeding at all?

A. I think I was from the mouth.

Q. Why was that?

A. Because of the blow I received, sir.

Q. Do you recall who delivered that blow?

A. No, sir.

Q. Well then, what happened after that?

A. When I got out of the elevator, I was pushed out and I was being kicked. When I got —

Q. Do you know who did the pushing?

A. Mr. Dassy did it, I think.

Q. Who did the . . . kicking —

A. Mr. Dassy.

Vassell stated he was then put into a segregation cell, which would be in Corridor 3B. That would be about 2:50 p.m. on Sunday, May 26.

Vassell described his time in segregation.

A. I was in pain all that night and I couldn't sleep. I was asking for medication from one of the guards. The guard that was there first, and I asked him to get

me some medication, which he said, well, he was going to change guards, so when they changed guards he will tell the other guard to get some medication for me. So the other guard was changed and I just kept on going like that, maybe about through four or five guards. And finally there I was crying and waiting and crying and waiting until finally they brought up some medication. THE COMMISSIONER. Did you tell them why you wanted medication?

A. Yes, sir.

Q. What did you say was the reason why you wanted medication?

A. I told them my neck was hurting. My throat was hurting. My head was hurting.

Q. Why was your throat hurting?

A. It could have been a blow I received, sir. I don't know.

Q. And your head?

A. Yes, sir.

Q. What was the reason for it hurting?

A. Well, it could have been the excitement or it could have been a blow. Usually, well, this combines, but both never happened at the same time. With my neck injury I usually get a headache first before my neck starts hurting and then the headache would go away and my neck would take over, and that was not the case. My throat was hurting at the same time.

Q. When you say "usually", you are referring to your injury in the motor car accident?

A. Yes. . . .

Q. This, you say, was different, and they were both hurting at the same time?

A. Yes.

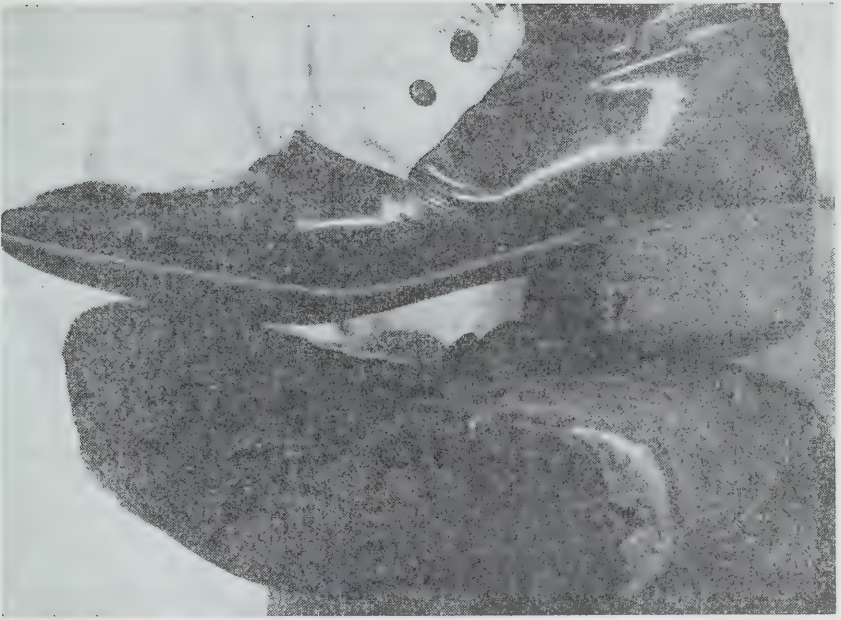
Vassell was unable to recall specifically being struck in the head. From the log records, it appears that he was in the segregation area from about 2:50 until 8:35 in the evening before he was given any medication, although Vassell's own recollection was that it was closer to midnight.

Vassell indicated the possibility that even after the regular medicine was distributed he might still have been in pain and obtained further medication, but he was not clear about that point. Certainly, there should be closer medical supervision in segregation and this would include nursing attention and medication where necessary.

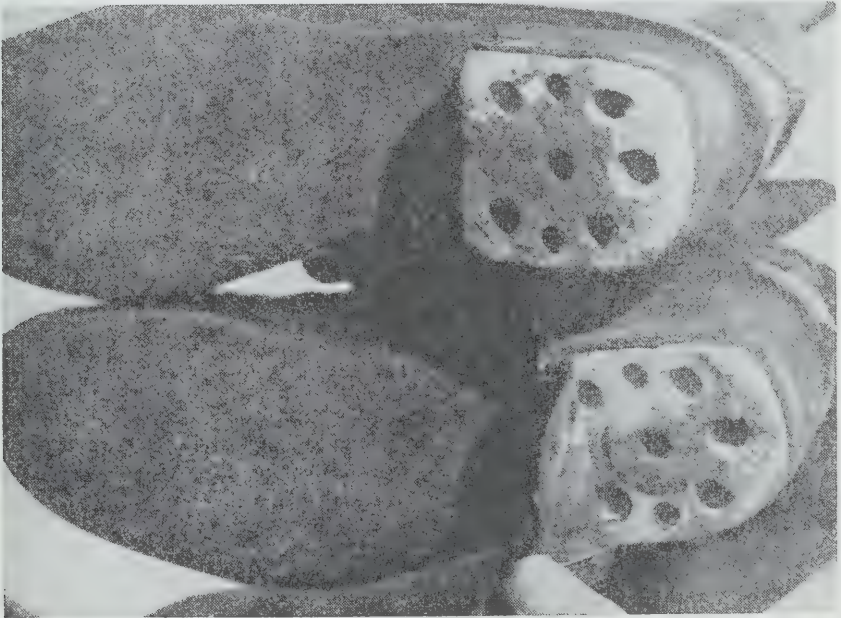
The log for 3B segregation for May 27, 1974, recorded that Vassell was released from the segregation area and discharged from the jail at 8:00 a.m. He said that he spent the next weekend in segregation as well.

Dassy's evidence differed somewhat from Vassell's as to what occurred while Vassell was being escorted from the old building to the 3B segregation cells. It may well be that Vassell's evidence about the part Dassy played was correct. By telling other correctional officers that Vassell was a drug addict, and perhaps also indicating that Vassell was smuggling drugs into the jail, which was very definitely frowned upon by the correctional staff, Dassy may have encouraged the other correctional officers to "rough up" Vassell.

Vassell said he did nothing in the elevator to cause him to be struck and said that he was struck because it was implied that he was a "druggie or something like that". Also, he thought, he was being struck by Dassy by way



Shoes brought into the jail by Fabian Vassell, showing holes in heels.



of example. It was his opinion that the other correctional officers were incited to strike him by the acts or the words of Dassy.

This is still another incident that most probably would not have occurred had the inmate been escorted to segregation by a senior correctional officer.

The next weekend, Vassell alleged he was treated in a harassing fashion. The shoes he was wearing on that occasion were examined and "they wanted to take them apart". He said that he was wearing a different pair. This seemed to constitute the "harassment" of which he complained.

Vassell stated that he had been in the Toronto Jail on only one other occasion, apart from the three weekends when he was serving his intermittent sentence. He had never seen any drugs in the jail at any other time.

With reference to the shoes he was wearing on the day of the search, he said he had bought them new but they had worn down from use. He indicated that the perforations were made by the manufacturer to make them lighter, adding that this was not uncommon.

Vassell said that he only put the pills in the left shoe and that he wrapped them with tissue before he put them in. He said the idea of using the perforations in the shoes was suggested to him by someone in the jail. "So this fellow closest to me, like he saw the pain I was in and told me to go to the guards but he saw I wasn't getting anywhere, so he suggested to me that, you know, I could put the tablets in the heels of my shoes."

Concerning the allegation that Dassy kicked him as he was moving along the basement corridor towards the elevator, there was the following exchange:

THE COMMISSIONER. Was that in the nature of getting you to move along or was it in the nature of someone that got pleasure out of giving pain to somebody else?

A. Well, I would say pleasure in giving pain with the intention of assuming that it is to get you to move along.

Vassell said that he was constantly moving and therefore no force was necessary to move him along.

As for whether there were any marks on his body as a result of any of the alleged assaults, Vassell answered, "Not that I can recall."

Mr. Carter asked Vassell about any assault that might have taken place while he was in the dormitory.

MR. CARTER. They lifted you off the bed and immediately took you out of the dormitory?

A. Yes, sir.

Q. And you don't remember being struck at that time, do you?

A. Well, if I really think about it - I don't want to make a decision of any sort, but I was struck.

Q. Wasn't the first time you ever said you were struck here in court after you heard Mr. Martin telling someone out in the hall that you had been struck on that occasion?

A. Well, as you have noticed going along, as I said previously, I haven't tried to remember anything of this nature because I was ashamed about it. Due to the circumstances of bringing it up again, should something come up to refresh my memory then I would remember the details, what took place.

Q. Did Mr. Martin's statement out in the hall refresh your memory?

A. Well, it did, sir, it did.

Q. It did?

A. Yes, sir.

Q. Do you recall being interviewed immediately after the event, or making a statement, I should say, at the jail? . . . In this statement you say absolutely nothing about being struck up in the dorm, do you?

A. No. As I said, I was only referring to the taking of tablets inside there, as you can see. Because, one, I didn't want to mention anything of that nature, sir. And, two, I didn't want to mention anything about it because it might have a bearing on what treatment I received following that statement.

Q. The first time that you ever said that you were struck in 11 dorm was after you had heard Mr. Martin say that?

A. I did say so, sir, yes, sir.

Q. Do you recall when Mr. Martin was talking to you?

A. No. He wasn't talking to me.

Q. He was talking to someone else?

A. Yes.

Mr. Carter brought out the fact that when Vassell saw the jail doctor the week after the incident he made no complaint and the next day his only complaint was with reference to the whiplash injury sustained in an earlier motor accident.

Vassell's answer to this was: "Well, my doctor had been treating me but I didn't think it was important to tell them, because under the circumstances I didn't know what treatment I had been receiving and I was trying to make it easier for myself."

There is no evidence to indicate that Vassell sustained any significant injury and if there was any assault on him it was of a minor nature. In fact, in considering all of the evidence, one would have to conclude that even Dassy's treatment of Vassell in the basement corridor, although not condoned in any way as being the proper act of a correctional officer, did not constitute serious use of force.

As for the elevator incident, if there was an assault it was of a minor nature. Again, this is not by way of justification.

As for any assault on Vassell in the dormitory, the evidence is exceedingly weak. No complaints of assault were made. There was no physical evidence, even on Vassell's own admission, and the medical records were negative.

As for the statement of Martin that was apparently overheard by Vassell during the hearings to the effect that Vassell was assaulted in 11 dormitory, the evidence of Martin, which will be dealt with in connection with his own incident, was unreliable in other aspects and was against the weight of evidence in the matters already mentioned; it cannot be accepted as sound

evidence of an assault or of unnecessary use of force on Vassell while in 11 dormitory.

Vassell was questioned about his previous use of drugs.

A. I don't even like taking the ones I get to take.

THE COMMISSIONER. These were the ones that were prescribed for you by the doctor.

A. Only when I find it is very necessary to do so would I take them.

Q. You don't think that in May you might have been overtreating yourself by taking drugs into the Toronto Jail?

A. No, sir . . .

Nurse Edna Kendrew was called as a witness in the Martin and Bible allegations. Her evidence will be reviewed in more detail in the discussion of those allegations. It is relevant in the Vassell allegation to mention a notation of hers, "very high on drugs". Mrs. Kendrew was unable to recall whether it was a result of her own observation or something that she was told on the telephone before Vassell was brought into surgery. She was also unable to say, assuming that it was told to her on the telephone, whether it was something that she agreed with on the basis of her own observation.

EVIDENCE OF MARTIN DOHERTY

C.O. 2 Martin Doherty gave evidence with reference to the Vassell incident. He said that he was the one who woke up Vassell in 11 dormitory. He also "retrieved his boots and took him out of 11 dorm and took him down to the dome area".

He was asked how he woke Vassell and he said he "just shook him by the shoulder".

MR. BYNOE. What observations, if any, did you make after you shook him?

A. He appeared to me to be high on something, either drugs or alcohol, sir. . . .

His eyes was glassy and it took me quite a while to wake him, sir.

Q. Then how did he get out of the bed and out the door?

A. Staggering. I had one hand on one of his arms.

Q. Was there . . . any other correctional officer with you and Mr. Vassell?

A. . . . I was the only correctional officer at the time with Vassell, sir.

Q. Did you at any time in the 11 dorm strike Mr. Vassell?

A. No, sir.

Doherty denied that anyone within his view struck Vassell.

A. Well, after I woke him [Vassell] up, sir, I got him up out of bed, and he

seemed a little bit unsteady on his feet like a man that could be drunk or could be under the influence of something, so I steadied him with one hand on his arm and I escorted him completely out of the door and down the stairs.

Q. Could you advise us as to the manner in which you walked or he walked?

A. Well, he walked under his own steam, but in view of the fact that he was walking unsteady I held onto his arm because I figured he might have fell going down the stairs.

Q. Did he leave the area quite quickly?

A. Just at a normal pace. He didn't resist or anything like that.

Q. Where did you take Mr. Vassell?

A. I took him down to the dome area and from there I took him into the surgery to be checked over by the nurse.

Q. Now then did you take any object of Mr. Vassell's with you?

A. Yes, I brought his boots down to the dome, sir. . . . I handed them to Mr. Stafford just outside the surgery, sir.

Q. With any specific instructions?

A. Well, we were under the impression that Vassell could possibly have pills and some were hidden in his boots.

Q. How did you gain that impression, do you recall?

A. I was only told by the sergeant in charge of the shift that he was under the impression that there was pills in 11 dormitory, and one of the inmates that was suspected was coloured, and the only coloured person that was in there at that time was Vassell.

Q. Did you see anything happen with respect to the boots in the surgery?

A. The heels of the boots was open, sir, and Mr. Stafford got a tweezers and extracted pills from the boots, sir. I don't know which boot it was; he extracted pills from the heel of one of the boots I am sure of.

Q. What happened after that with respect to Mr. Vassell?

A. Well, I asked . . . "These are your boots?", and he said, "Yes." I said "Did you know if you had those pills in the heel?" and he said he did. I said "Do you realize that it could be a criminal offence bringing drugs and contraband into the jail?" He said he didn't, that this was his first time in an institution. He said the pills were his own medication on the street.

Q. Now then, what was Mr. Vassell's condition at that time, did you notice?

A. He still looked pretty well high.

Q. What if anything did you do with Mr. Vassell after that?

A. Well, he was left in the dome area to make a statement, sir. . . . I turned him over to . . . Mr. Stafford and a nurse . . .

THE COMMISSIONER. Was Mr. Stafford still there when you left?

A. I believe he was, yes.

Q. Did you remain there while Mr. Vassell was seen by the nurse?

A. I remained while he was seen by the nurse, yes, sir.

Q. And then what did you do after he was seen by the nurse?

A. Then we took him out to the dome area and sat him in one of the lawyer's booths and asked him if he wanted to write a statement. . . .

Q. At any time from the time you awakened Mr. Vassell until the time you left him in the . . . lawyer's booths, did you see anyone strike Mr. Vassell?

A. No, sir.

Questioned by Mr. Salem, Doherty said that he had told Vassell "to get up out of bed" and "it took five or six minutes" to wake him. "I spoke to him first and he did not seem to be hearing anything and I shook his shoulder. . . . That is all I did."

EVIDENCE OF ALEXANDER E. SILLS

C.O. 1 Sills was born in Georgetown, British Guiana (now Guyana). He was 5'10" in height and aged 30. He commenced his employment with the Ministry of Correctional Services on April 1, 1974. He had in-jail training under the supervision of another correctional officer, and in January 1975 completed a three-week live-in training course at Guelph. He had also taken a correspondence course.

Sills was questioned with reference to the allegation of Vassell.

MB. BYNOE. He [Vassell] says that you and Mr. Dassy struck him when he was outside the elevator before he got on and that you were standing to Mr. Vassell's right and Mr. Dassy was to his left, and that Mr. Dassy struck Mr. Vassell in the stomach; that you saw Mr. Dassy hitting him and that you then came up and began to punch Mr. Vassell with both fists, and Dassy was hitting Mr. Vassell with his elbow.

Then he said when Vassell got in the elevator that you were hitting him with your fist and Mr. Dassy was using his elbow. And there was a total of eight blows landed in the elevator and that Mr. Vassell said he was crying and bleeding from the mouth when he was pushed out of the elevator and then kicked by Mr. Dassy.

Now what comment do you have to make with respect to that evidence by Mr. Vassell?

A. I can't . . . I think this is a case of misidentification. I was not there.

Q. You were not there, and you deny that you hit Mr. Vassell?

A. Certainly.

Q. Do you know of any reason, apart from a mistake, that Mr. Vassell would bear you any ill will?

A. I can't — I can't recall the inmate, really, because I had been there for such a short time. I was there for only about — that would be May — about four weeks in the dorm.

Q. I see.

A. I just can't recall the inmate or the incident.

Sills was not named by Dassy but only by Vassell. After examining various logs and considering other evidence, I accepted Sills' denial. I attribute Vassell's naming of Sills to a misidentification on the part of Vassell.

EVIDENCE OF
EDWARD EUGENE ROSS DOWHEY

C.O. 2 Dowhey joined the Toronto Jail in September 1973. The next spring he took the three-week course at Guelph, and he also completed the correspondence course. He was born in Toronto in 1948 and was 26 at the time of giving evidence. He was 6'5" in height and weighed 253 pounds.

Dowhey had a day off on May 25 and therefore was not on duty during the search of 11 dormitory. On Sunday, May 26, he was working the 3:00 to 11:00 shift. He signed in at 1:43 p.m. and was assigned to 2C in the new building. He was asked about the Vassell incident.

MR. BYNOE. At approximately 2:40 to 2:50 p.m. on Sunday, May the 26th, do you recall being involved in an incident involving an inmate and a correctional officer, Gary Dassy, on an elevator?

A. Of all the incidents I am involved in, that I made statements on, that is the only one that I do not recall whatsoever.

Dassy's evidence was summarized for Dowhey.

Q. Mr. Dassy testified that he was proceeding along with Mr. Vassell and he hollered to some guards to hold the elevator and he pushed Mr. Vassell into the elevator against some guards. . . . A few elbows were thrown at Mr. Vassell and the only one Mr. Dassy can identify is you, Mr. Dowhey. He picked out your photograph.

He said, "Mr. Vassell was hit a couple of times with elbows by Dowhey and the other guards, I can't recall. Dowhey being the biggest in the jail in size, he stood right out. And Mr. Dowhey was not holding Mr. Vassell at the time he was let go." And Mr. Dassy was asked if Mr. Dowhey said anything to Mr. Dassy or to Mr. Vassell and the reply was, and this remark is attributed to you, Mr. Dowhey, "So you are the one with the drugs? You are one of the ones that brought drugs into the jail?"

Now that is what Mr. Dassy says.

Dowhey was advised that Vassell had said, "There was one guard who hit me two or three times."

Q. . . . and he picked the guard out and he said it was you and that you struck him in the elevator on several occasions. Now, Mr. Dowhey, having heard that, has it refreshed your memory with respect to riding in an elevator at that time?

A. No, sir, not at all.

Q. And do you have any comment with respect to what Mr. Dassy said?

A. Why would I make a statement, "You are the one with the drugs?" I wasn't even there, I was just coming on shift. I would not have known there was a drug raid on the previous day.

Q. If you were in the jail for any length of time, Mr. Dowhey, having entered, as you indicated at 1:43 p.m. —

A. I was there, yes. I was starting up for my shift.

Q. At least an hour later you might well have had an opportunity to pick up some knowledge of a drug raid. Would you agree with that?

A. Yes, I would agree with it.

Q. Now, what do you say about Mr. Vassell? He picked out your photograph and he also said that you struck him.

A. I cannot remember that, sir. I have admitted in other statements of striking inmates in self-defence, and if I did strike him I would admit it. If I could remember, but I do not recall the incident.

Q. Do you recall at any time being on the elevator when an inmate was pushed in or came in at a relatively high speed and bumped into you or other guards and was pushed off?

A. No, sir. . . .

Q. Can you give any reason why Mr. Dassy would make such an allegation against you, Mr. Dowhey, if it wasn't true?

A. I am the biggest one to pick out because of my size. We did not get along together. He tried to attack me once when we were drinking at the Legion. We have a personality conflict.

Q. What about Mr. Vassell, is there any reason why an inmate by the name of Vassell should wrongly identify you?

A. I have no idea. . . .

THE COMMISSIONER. Mr. Dowhey, you say that you did strike some inmates in self-defence?

A. Yes.

Q. Who were they?

A. There was one last Friday when I was attacked. His name was Leroy Malcolm. There was a Richard Malayny and I cannot remember the others off hand. I tried to check my statements —

Q. How many others were there?

A. Three or four.

Concerning Leroy Malcolm, Dowhey related the following:

A. We had an alarm at the centre and I responded to it with other personnel. This man, Leroy Malcolm, attacked one of the officers and the officer was on the ground with this man when I arrived. We pulled him out of the corridor and I was taking him back to the segregation area and he jumped on me. I have a scar from here to here. . . .

Q. You indicated that you have a scar?

A. I have a scratch from here to here. It is about seven inches long.

Q. Would you roll up your sleeve?

A. There is nothing there — there is no mark there.

Q. There isn't?

A. No.

Q. There are no nail marks visible now?

A. No. There is a small puncture there.

Q. What did you do to him?

A. I hit him.

- Q. Where?
- A. In the stomach, I believe.
- Q. Yes. Did you do it once or more than once?
- A. Just the once.
- Q. What was the effect?
- A. He started going back and I slammed the door.
- Q. Did that complete that incident?
- A. Yes. I told my senior officers about it and I went for medical attention.

The Malayny incident, one of the others mentioned by Dowhey, was reviewed earlier (see Malayny allegation).

Dowhey's denial of assault on Vassell, as had been alleged by both Vassell and Dassy, had to be considered in the light of the personal relationship between Dassy and Dowhey. To put it succinctly, they could not be considered good friends, and Dassy may, therefore, have had a motive for implicating Dowhey. If much the same evidence had not been given by Vassell, it would have been easy to dismiss the allegations.

It is quite within the realm of probability that Dassy pushed or threw Vassell into the elevator while correctional officers including Dowhey were present, that Vassell then came in contact with Dowhey, and that Dowhey reacted by elbowing Vassell away. At the same time Dowhey might well have said the words alleged, namely that Vassell was the one with drugs, or the one that brought drugs into the jail.

The jail grapevine works as quickly with correctional officers as it does with inmates and I do not doubt that if Dowhey entered the jail at 1:43 p.m. he would have heard of a raid and the finding of drugs in 11 dormitory the previous evening by 2:40 or 2:50 p.m., the time of the alleged elevator incident involving Vassell.

I therefore cannot accept Dowhey's statement that he would not have known that there was a drug raid the previous day, but it could very well be that the incident in the elevator was one that he did not recall. For, apart from Dassy's dramatization, it was a rather minor incident and one that Dowhey could well have forgotten over the span of almost 10 months.

VASSELL SUMMARY

Dowhey admitted that, in his year and a half at the Toronto Jail, he had been involved in striking inmates in self-defence. Some correctional officers are quick to react with force when force is used against them, and having seen and observed Dowhey when giving evidence I have concluded that he would not be averse to elbowing away an inmate who came in contact with him. But, as stated earlier, this was, in the scheme of things, a relatively minor incident and I do not think that Dowhey's actions could be considered a proven "use of unnecessary force", nor was it a "physical assault" except

possibly in the narrowest and most technical way.

I have already signified an acceptance of Sills' denial that he was present. This leaves Dassy as the remaining named officer. On his own evidence, I find that he escorted Vassell to segregation in a manner that was unacceptable and constituted some use of unnecessary force. As for the alleged assault on Vassell outside the elevator and while he was travelling in it, the fact that he made no complaint and that there were no positive medical findings leads to the conclusion that there was no assault of any significance. There may well have been some jostling or elbowing by Dassy, Dowhey, and a third correctional officer mistaken for Sills. This does not mean that such conduct is to be condoned even if it appears only in a minor manifestation.



His Honour Judge B. Barry Shapiro is the Senior Judge of the County Court of the Judicial District of Peel, which adjoins Metropolitan Toronto and encompasses the municipalities of Mississauga, Brampton, and Caledon. The district includes the Toronto International Airport. The court, whose judges are federally appointed and also serve as local judges of the High Court of Ontario, tries criminal and civil cases, both jury and non-jury, as well as dealing with Surrogate Court matters. Judge Shapiro has served as Chairman of the Peel Regional Board of Commissioners of Police since the force's inception in 1973. Before his appointment to the Bench in 1971, he was an active trial lawyer and a Bencher of the Law Society of Upper Canada. He is a past president of the Medico-Legal Society of Toronto. He served overseas during World War II, holds the rank of colonel in the Canadian Forces Reserve, and was one of the Aides-de-Camp to the Lieutenant-Governors of Ontario from 1958 to 1974. The Royal Commission on the Toronto Jail and Custodial Services has drawn on his experience in the disciplinary arts and brought to the fore his general concern for people and particularly for those convicted persons who have been sentenced to periods in custody. During the Commission's hearings, this interest was broadened to include correctional staff.

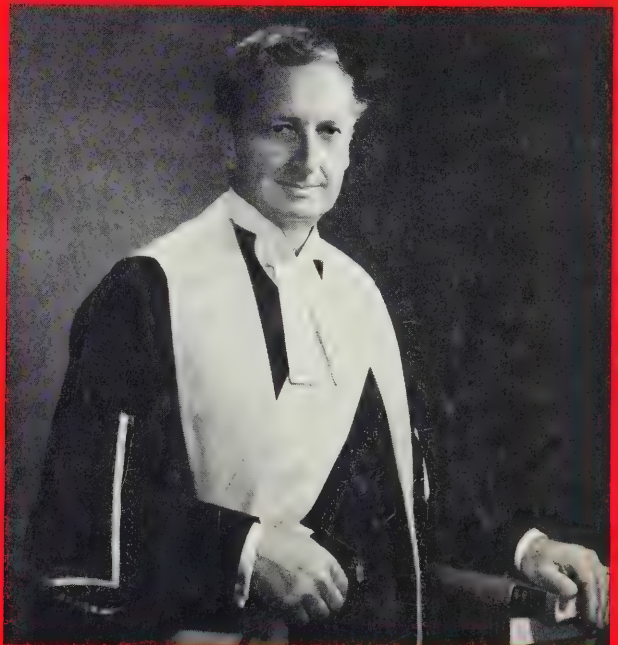


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